

Analyzing the Criminal Justice and Military Models of Counterterrorism: Evidence
from the United States

By
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Abstract

States' counterterrorism strategies have been categorized into the criminal justice and military models of counterterrorism. Currently, the international relations literature lacks a systematic exploration or theorization of these models, and relies mainly on broad conceptualizations and piecemeal evidence to make claims in reference to these two counterterrorism models.

This dissertation examines the conceptual literature on the criminal justice and military models of counterterrorism, further theorizes these models, and empirically analyzes both quantitatively and qualitatively using evidence from the United States. Using data from the Global Terrorism Database and Stockholm International Peace Research Institute, spanning from 1970 to 2014, the quantitative analysis looks predominantly at the military model of counterterrorism in order to determine its relationship with terrorism and relevant domestic political processes. The qualitative analysis, comprised mainly of legal content analysis of the same temporal frame, investigates the conditions under which the models are employed, focusing especially on the criminal justice model. The findings suggest that criminal justice responses are employed mainly against perpetrators from Western nations and U.S. allies, while military responses are disproportionately used against Muslim individuals, especially those affiliated with al-Qaeda, Taliban, and al Shabab. The findings also suggest that both models have been equally employed before and after 9/11, calling into question claims from recent literature suggesting that military counterterrorism policy is a post-9/11 phenomenon. Finally, the results indicate that terrorism both directly and indirectly impacts military activity in the U.S. and, contrarily, that military activity is associated with increases in future supplies of terrorism. This suggests that military action alone may not be enough to combat terrorism.

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Introduction

How do governments respond to terrorism? What determines the choices of states' counterterrorism strategies? What are the domestic political effects of these strategies? States have an arsenal of counterterrorism tools at their disposal, designed to limit terrorist activity. The practical need for comprehensive counterterrorism strategies as a result of the recent increase in terrorist activity in the last half century gave rise to burgeoning literature. However, this literature has not addressed these three questions in a systematic and theory-driven manner. This dissertation takes on the task of working with the existing literature to theorize the criminal justice and military models of counterterrorism in order to facilitate empirical investigation for the purpose of answering these questions.

Many of the counterterrorism tools used by states fall into two categories commonly used in the literature on counterterrorism: criminal justice or military. As a long standing element of counterterrorism policy, criminal justice measures of counterterrorism involve law enforcement, sanctions, detentions and prosecutions, and public diplomacy to name a few. Military measures, which also have a long history worldwide for use in counterterrorism, include displays of force, such as raids, deployments, militarized conflict, targeted killings, among others, but also include other types of actions including border patrol, humanitarianism, and training. Both types of responses have been regarded as effective in some analyses and as ineffective in others. Regardless of their evaluations, countries continue to employ criminal justice and military responses as their dominant strategies to counter the threat of terrorism.

What we know about each of these types of counterterrorism responses in practice is that they are at times used independent of one another and at other times used sequentially and even simultaneously. The choice of a particular counterterrorism strategy appears to be influenced by a variety of factors including where the attack was planned, the citizenship of the perpetrator,

and the type and severity of the attack committed, among other considerations. Nevertheless, both appear to be employed consistently and frequently in recent history of states' responses to terrorism.

This research situates itself into the camp of International Relations terrorism and counterterrorism literature. In addition, it utilizes aspects of criminological approaches to preventing and combatting terrorism, especially as regards the criminal justice model of counterterrorism. Finally, through the case study of the United States, this research generates a dialogue between IR literature and literature on American public law and public policy, which is crucial to understanding the limits and boundaries of both types of counterterrorism strategies.

This work is concerned with developing fully theorized models of counterterrorism practices, specifically criminal justice and military strategies, and understanding not only how and when they are employed, but also their relationship to the phenomenon of terrorism. This work is also concerned with differentiating the two strategic models and understanding how they affect closely related political and social phenomena such as government spending, public opinion, and the civil-criminal process.

To this end several hypotheses about the nature of the counterterrorism responses and their relationship to terrorism are tested using evidence from the United States spanning from 1971-2014. There is an understanding that the criminal justice model of counterterrorism seeks to preserve democratic principles, such as rule of law and civil liberties, and therefore yields less violations of these principles when compared to the military model. In the context of the United States, criminal justice approaches to terrorism are thought to have been used predominantly before 9/11, while military action, detention, and tribunal came after these attacks. Post-9/11 thought, as well as contemporaneous public opinion, operated under an assumption that the

severe tactics of a military response are a better deterrent of terrorism. Post-9/11 terrorism not only directly evokes a military response, but incites the public to rally around military action as well.

These hypotheses connecting terrorism, military activity, and public opinion and connecting terrorism and criminal justice measures are investigated through quantitative and qualitative analysis. I use vector autoregression, a variant of multiple time series, to investigate the relationship between terrorism and the military activity and also to expose any temporal anomalies, for example the proposed paradigm shift from the criminal justice model to the military model after 9/11. In addition, the quantitative analysis examines the role of public opinion in military responses to terrorism. Qualitative analysis is performed to investigate those questions that cannot be answered with data or due to a lack of data; predominantly questions related to the criminal justice model and questions that deal with how and under what conditions the different models are employed.

Using the U.S. as my case study, I make several recurrent arguments throughout the text. Namely, that the two counterterrorism models are often used concurrently and sometimes interchangeably over time rather than explicitly before and after 9/11, that terrorism has direct impacts on the public and the military, that counterterrorism responses do not always abide by the democratic principles they claim to protect, and finally, that the counterterrorism models do not treat all suspected terrorists equally. The overarching theme to these arguments is that when terrorism occurs, the government nearly always responds, but may not always do so consistently. The quantitative research empirically demonstrates that the government responds and the qualitative research shows how and why.

The question of the origins and definitions of terrorism and counterterrorism are not easily answered nor analyzed. Chapter 1 defines terrorism for the purposes of this research, separating out domestic from transnational and even from state sponsored. It explains the goals and strategies of modern terrorism and presents foundations for combatting and preventing terrorism, while paying special attention to the roles of the military and of the criminal justice system. Specifically, this chapter presents the limited research on the criminal justice and military models of counterterrorism, how they have previously been conceptualized, and how they have been thought to relate to counterterrorism practice.

Chapter 2 begins with a quick introduction to early U.S. experiences with terrorism and proceeds to discuss in detail the system of U.S. counterterrorism practice for the last half century. It explores these practices in the context of the criminal justice and military models of counterterrorism and highlights several inconsistencies between the conceptual literature and the history of counterterrorism practice in the U.S.

The criminal justice and military models are fully theorized in chapter 3. I begin with a brief discussion of the theory building process; what theory is and its relevant components, how it is constructed, and how it is used. This chapter takes the conceptualizations of the criminal justice and military models of counterterrorism and theorizes them for the purpose of hypothesis testing. It lays out the axioms and assumptions contained in each model, which leads to the presentation of several preliminary hypotheses about each. These hypotheses do not just make claims about phenomena within or related to each respective model, but also suggest associations between the two models.

These hypotheses are tested in the next two chapters. Chapter 4 presents the research design for the quantitative analysis. It introduces vector autoregression and its component

analytical tools: granger causality, impulse response function, and forecast error variance decomposition. It explains the method's applicability to this research and considers its relevance over other frequently used models such as standard time series or autodistributed lag models. There is a thorough explanation of the data sources and coding decisions made for each of the variables. The chapter ends with the presentation of the quantitative results and a discussion of their implications.

Chapter 5 introduces the qualitative analysis. A combination of historical, content, and discourse analysis were used to investigate the practices of the government with regard to criminal-legal and military responses to terrorism. The methodology is meticulously detailed, providing relevant terms of analysis, their conceptualizations and definitions, along with all coding schemes. The results are presented on their own terms and in relation to the quantitative findings presented in Chapter 4. The qualitative research explores how, why, and under what conditions the different models of counterterrorism are used.

Finally, the conclusion of the dissertation discusses the implications of the empirical findings in totality; both quantitative and qualitative. It highlights the relevance and importance of this dissertation to counterterrorism policy as well as its contribution to the International Relations and counterterrorism literature. It evaluates the research, what it is able to accomplish and what questions are still unanswered, and points out the limitations to the study. It concludes with suggestions of avenues for future research in this subject area.

Chapter 1: Terrorism and Counterterrorism: Arriving at Conceptual Definitions

The threat of terrorism, both domestic and transnational, has grown throughout the last half century. Academics and practitioners of counterterrorism have yet to agree on a conceptual understanding of terrorism, its causes, and motives, let alone a best practice strategy to combat it. This chapter lays out the existing literature on terrorism and counterterrorism in attempt to generate a synthesis between theory and practice with the intent of producing an operational understanding of terrorism and the criminal justice and military strategies that governments employ to combat it.

Terrorism

The international community, broadly speaking, has long struggled to settle on a singular definition of terrorism. While most agencies, organizations, and scholars agree that terrorism is meant to incite fear and anxiety into an audience beyond that of the immediate victims, there is little consensus about the motivations of terrorist violence as political, religious, social or some combination of the three, whether the targets are necessarily civilian non-combatants or can include military targets as well, and whether the perpetrators can be state actors (or act on behalf of a state) or must be non-state actors.¹

Some international organizations such as the UN have yet to come to a consensus on a definition of terrorism. The UN fears that defining such an act may come with the risk of religious and ethnic profiling that may consequentially incite more individuals to fall prey to

¹ Growing concerns of cyber-terrorism and cyber-warfare have pushed for a re-examination of the definition of terrorism and the nature of the threat that it imposes. In 1991, the National Academy of Sciences reported that “tomorrow’s terrorist may be able to do more damage with a keyboard than with a bomb,” drawing attention to the magnitude of damage that one cyber-attack could accomplish. That cyber-terrorism has moved to the forefront of national security consideration necessarily requires that governments become more flexible in the way that they define the nature of terrorist acts, threats, mediums, perpetrators, and victims (Jarvis and Macdonald 2015).

radicalism and extremism.² The World Trade Organization, despite its many anti-terrorism financing task forces, relies on a third party, RAND National Security Research Division, to set its operational definition of terrorism as it does not have a doctrine of its own conceptually outlining terrorism.³ The actions of the International Committee of the Red Cross are predominantly guided by International Humanitarian Law (IHL), which does not provide a concrete definition of terrorism; however, the Red Cross notes that many acts that would be associated with terrorism would be prohibited by IHL if committed in peace time.⁴

Since there is no international consensus with regard to what counts as terrorism, states rely on conceptualizations and definitions of terrorism from domestic organizations and institutions. However, definitions of terrorism also vary domestically. The U.S. Department of State, for example, defines terrorism as “premeditated, politically motivated violence against noncombatant targets by subnational groups or clandestine agents, usually intended to influence an audience.” The U.S. Department of Defense defines terrorism as “[t]he unlawful use, or threatened use, of force or violence against individuals or property to coerce and intimidate governments or societies, often to achieve political, religious, or ideological objectives.” The two definitions do not agree on several aspects. First, they disagree on whether the motivation of terrorism is explicitly political or a combination of political, religious, and ideological motives. Second, they disagree on the qualification of victims: non-combatants versus any individual or even property. Finally, they disagree on the type of perpetrator; the State Department identifies non-state actors in its definition, while the Department of Defense does not specify any type of

² This information is taken from the UN General Assembly Sixth Committee 4th Meeting (AM) on October 7, 2005. The press release for this meeting and partial transcripts are titled “Agreed definition for the term ‘terrorism’ said to be needed for consensus on completing comprehensive convention against it,” and can be read in full at <https://www.un.org/press/en/2005/gal3276.doc.htm>.

³ This fact is evidenced by the World Trade Organization Annual Reports, which rely on RAND terrorism data to explore the links between terrorism, terrorist financing, subsidies, trade, and other economic variables.

⁴ This information was taken from the International Committee for the Red Cross’ 2011 FAQ about IHL and terrorism. It can be read in full <https://www.icrc.org/eng/resources/documents/faq/terrorism-faq-050504.htm>

perpetrator. In addition, none of the definitions seem to identify the difference between domestic and transnational terrorism other than borders, even though theory suggests the root causes, motivations, and perpetrators may be different.

Outside of practice, definitions of terrorism vary across academic fields, and even within academic subfields. Criminology, for example, declares defining terrorism a “sticky activity” because what separates terrorism from ordinary crime is motivation, which is often unobservable (Mythen and Walklate 2005). While criminologists generally agree that terrorism is the use of violence to intimidate civilians and coerce a government or identifiable community into religious or political change, they seem to disagree about the types of actors involved, the types of intended targets, and the major causes and other possible motivations (Agnew 2010). Sociological literature writes that defining terrorism is “highly controversial for reasons other than conceptual issues and problems,” but rather because of the unintended consequences that definitions may have, such as condemnation of individuals and cultivation of ideological and political bias (Gibbs 1989). Some sociologists have defined terrorism as a form of social control in which organized civilians covertly inflict mass violence on other civilians as a form of “unilateral self-help (Black 2002; Deflem 2004, Turk 2004).”

In political science, and more specifically, in the International Relations (IR) subfield, terrorism is generally characterized by violence against civilians with the intent to intimidate a larger audience in order to realize a political or ideological goal. However, some IR scholars argue that terrorists use political violence to acquire support through intimidation and fear (Crenshaw 1981, Rapoport 1984, Jackson 2009), or that they use violence to elicit an asymmetrical response from the government in order to garner a more legitimate form of support (Badey 1998, McCauley 2006, Siquiera and Sandler 2006, Kearns et al., 2014). Even more, IR

scholars are unresolved on the purpose of terrorism with some citing that terrorism often lacks clear and identifiable goals (see Lake 2002, Abrahms 2008), while others believe terrorism to be the product of rational actors seeking to maximize utility on a clearly defined goal (Hoffman 1999, Pape 2005).

Despite the variations across theory and practice, there are some commonalities across the definitions of terrorism. First, the violence, whether or actual or intended, is premeditated, resulting from some kind of planning rather than impulse. Second, motivations for terrorism, though vast, do not necessarily include personal gain at the aggregate level.⁵ Third, terrorism is intended to have a lasting impact beyond the immediate attack and these impacts can range from social and psychological to financial and political. Fourth, terrorism sets its aim on unarmed individuals and property, which can include civilians as well as military personnel not engaged in armed combat. Finally, terrorism is defined as such when it is carried out by clandestine agents, such as non-state or subnational groups or covert organizations acting on behalf of a state or state actor.

For the purposes of this study, terrorism is defined as the premeditated or threatened use of violence by an individual or group to obtain a political or ideological objective through intimidating or inciting fear in a larger audience beyond the immediate victims. This definition leaves open several possibilities. First, the goals of the terrorists may be political or ideological. This reflects the more recent trend in the fourth wave of terrorism to promote religious, nationalist, and other ideological ideals. Second, it makes no claim about whom or what the immediate victim must be, allowing the targets of terrorist attacks to be either people or property.

⁵ I add at the aggregate level here, because some research may suggest that some individuals participating in terrorism do so for financial gains, religion, and reputation (see for example Lutz and Lutz 2005).

Finally, it is vague about the affiliations of the perpetrator, making no mention of the necessity for subnational actors, allowing for the possibility of state and state sponsored terrorism.

In scholarship and policy, terrorism is often classified into two categories: domestic and transnational. Domestic terrorism, also known as homegrown terrorism, occurs when the venue, target, and perpetrators are all from the same country. The USA Patriot Act (Section 802) declares that an act is considered domestic terrorism if it occurs primarily on U.S. territory, is “dangerous to human life” and is intended to “intimidate or coerce a civilian population, influence the policy of a government by intimidation or coercion, or affect the conduct of government by mass destruction, assassination or kidnapping.” Other definitions of domestic terrorism suggest it to be violence against civilian populations by a citizen of the target nation with the intent to influence national policy (see for example RAND Corporation and EUROPOL).⁶ Domestic terrorism is almost always political or ideological in nature and is aimed at influencing the political environment either in regard to policy or to changes in the treatment of specific groups (Ross and Gurr 1989). Though recent years have brought forward a strategy focused predominantly on combatting international terrorist threats, domestic terrorism has caused nearly twice as many deaths than transnational terrorism since 1970 and more than twice as many deaths in the U.S. since the attacks on September 11.⁷

Terrorism is transnational when “an incident in one country involves victims, targets, institutions, governments, or citizens of another country (Sandler and Enders 2004).” For example, the FBI, through US Code 18, section 2331, defines international or transnational terrorism by three characteristics, similar to those set forth in the definition of domestic

⁶ RAND <http://www.rand.org/topics/domestic-terrorism.html>

EUROPOL https://www.europol.europa.eu/sites/default/files/documents/europol_tesat_2016.pdf

⁷ This information was harvested from the Global Terrorism Database using the int_any variable. For calculation of deaths related to domestic terrorist attacks, int_any is coded as zero. It is coded as one for all international attacks.

terrorism. First, it must involve acts that are dangerous to human life that violate federal or state law. Second, the act(s) must be intended to coerce a civilian population, influence the policy of the government through intimidation or coercion, and affect the conduct of the government by mass destruction, assassination, or kidnapping. Finally, the act(s) must occur primarily outside of the territorial jurisdiction of the state or transcend national boundaries either in the locale of the target, the citizenship of the intended victims, the origins of the perpetrator, or the locale in which they operate or seek asylum, or the means by which they are accomplished.⁸ Though considerably less deadly than domestic terrorism over time, transnational terrorism has occupied a major security priority for the better part of the last half-century. With the initial increase in transnational attacks in the 1970s and second and third waves in the 90s and 2000s, the media and public have appealed to policy makers worldwide to prioritize the eradication of transnational terrorist acts and organizations, including state sponsored terrorism in Libya, Iran, and Iraq among others, culminating in the U.S.-led Coalition of the Willing to end Saddam Hussein's support for state sponsored terrorism.

Some studies further impugn states with terrorist activity, adding another category of terrorism, namely, state sponsored. States sometimes permit the operations of terrorist groups within their border, and even request that these actors perform terrorist acts on the state's behalf in order to achieve some political goal important to the state. Usually, states will sponsor terrorism when they are dealing with problems of intra- or interstate conflict, have moderately weak rule of law and political institutions, but have demonstrated coercive bargaining capabilities. Often the relationship between the state and its sponsored group backfires when the

⁸ This information can be found on the FBI official website which discusses 18 U.S. Code section 2331. <https://www.fbi.gov/investigate/terrorism>

demands of the groups are not adequately met; therefore states that sponsor terrorism are also more likely to experience domestic terror (Bapat 2012).

Throughout history, and particularly in the last half century, the world has seen an increasing number of sovereign states sponsoring terrorism in many different ways. Some states provide financial or material support to terrorist organization offering not only money, but weapons, equipment, and facilities. In addition, states may offer amnesty and political asylum to terrorist groups from other states seeking to apprehend terrorists (Banks et al., 2008). States may also passively support terrorism by turning a blind eye to terrorist operations within their borders. States such as South Africa, Libya, Iran, Iraq, Pakistan, and others have been suspected to sponsor terrorist groups both within and outside of their borders.

As investigative capabilities have become stronger, active support of terrorism by states has declined, while passive support of terrorism by states has increased. Today, the cost of overt state sponsorship of terrorism is too high and the groups themselves benefit less as direct cash infusions, unenforced borders, and active state participation in recruiting and operations make the groups more visible and vulnerable. However, passive support of terrorism still allows for the state to claim plausible deniability and even inability to effectively combat terror groups.

While state sponsored terrorist organizations may require different empirical considerations than non-state groups, governments tend to view both in a similar conceptual vein, with one caveat: states that sponsor terrorism can be retaliated against (legally) by the norms and conventions of the international system and international law. That said, the terrorism literature lacks systematic explorations of the characterizations of terrorist groups that seek state sponsorship versus those that do not. Until these studies exist and for the purposes of this study, state sponsored terrorist events are treated in the same manner as terrorism committed by non-

state and sub-national actors. The definition of terrorism used in this research allows for the empirical investigation of transnational terrorism and transnational state sponsored terrorism, but does not include measures of domestic terrorism, as this type of terrorism more readily includes the influence of subnational level indicators that vary from state to state.⁹

Though scholars and counterterrorism actors have yet to come to a consensus on the definitions of transnational and domestic terrorism, they have already begun chronicling the evolution of terrorist events through waves in history. Criminological and political science literature differ somewhat about the chronology of the so-called “waves of terrorism”. In criminology, modern terrorism dates back to the political hostage taking and plane hijackings of the 1960s (LaFree 2010), but political scientist David Rapoport (2004) suggests that modern terrorism began in the 1880s with anarchist turbulence in Russia. Regardless of either time of origin, modern terrorism has evolved as policies and technology have changed over time. First, terrorism has become more transnational and less confined by borders. While domestic terrorism is still the most prevalent form of terrorism, transnational terrorism began to increase in the late 1960s, including the Popular Front for the Liberation of Palestine (PFLP) air hijacking of an El Al flight from Rome to Tel Aviv, and, for the U.S., the hijacking of El AL flight 253 from Tel Aviv to New York City.

Second, targets of terrorist attacks have become more political. In 1984, the Provisional Irish Republican Army (PIRA) bombed the Brighton Hotel, killing four U.K. government officials and injuring dozens more. In the U.S., in 1969, the Department of Commerce, the Air Forces Induction Center, and the Federal Building of New York City were bombed, not to

⁹ This is not to say that empirical investigations of transnational terrorism do not consider national level predictors, rather suggests that the predictors of transnational terrorism, as exist in current literature, are generally constant from state to state (for example GDP, regime type, international militarized conflict). On the other hand, predictors of domestic terrorism might include different subnational predictors that are specific to the conditions and environment of that state being analyzed.

mention the U.S. embassy bombings that would take place in the 70s, 80s and 90s. While radicalization can be traced back at least as far as Russia in the late 1800s, a more recent wave, in the late 1980s, of political and religious radicalization has threatened modern political systems and ways of life (McCauley and Moskalenko 2008).

Third, and especially as of late, terrorists have learned how to effectively exploit the media and garner attention to their advantage. Media outlets have become central to the strategies of terrorist groups and media coverage is considered an important calculation during the initial stages of planning an attack (Schmid and de Graaf 1982, Alexander and Latter 1990, Nacos 1994, Wilkinson 1997). Research in sociology, criminology, and even the margins of political science have suggested that terrorism is better understood as a form of communication, rather than solely as political violence (Crelinsten 2002, Nacos 2003, Fernandez 2009). Terrorist groups not only employ strategies that target media exposure and public recognition in advancement of their goals, but have also moved to social media for recruitment and retention efforts (Conway 2017).

An argument may be made that terrorism has evolved in a way that in effect requires governments to respond with certain types of strategies. For example, terrorist groups have greater access to biological, chemical, and nuclear weapons, technology both for recruitment and weapons capabilities, and political access, including governmental influence and coercion (Laqueur 1996, Jackson 2001). Terrorism groups have also demonstrated greater resolve to carry out attacks against their targets.¹⁰ As terrorist groups gain greater access and capabilities, especially in the area of weapons and military style training and tactics, some scholars and

¹⁰ This is mentioned in the FBI Law Enforcement Bulletin. O'Brien, Lauren. (2011). The Evolution of Terrorism Since 9/11. Retrieved from <https://leb.fbi.gov/2011/september/the-evolution-of-terrorism-since-9-11>

practitioners believe that states have no choice other than to respond to these groups with equal, if not great, displays of capabilities and force (Merari 1993, Rumsfeld 2002).¹¹

Although terrorist activity has changed over time and has evolved to greater resolve and capabilities, the primary strategies employed to combat it have stayed the same. Whether in the late nineteenth century or in the early 1960s, government responses to terrorism remained relatively static and somewhat lackluster, at least until the attacks of 9/11 (Alexander 2002). Thus far, government counterterrorism responses can be largely confined to two major approaches: criminal justice and military.

Counterterrorism

Counterterrorism may be loosely defined as “a mix of public and foreign policies designed to limit the actions of terrorist groups and individuals associated with terrorist organizations in an attempt to protect the general public from terrorist violence (Omelycheva 2010).” Actions of counterterrorism policies may include everything from criminal legal prosecution, sanctions and suspension of financial transactions involving terrorist groups and their sponsors, law enforcement operations, intelligence collection, military commissions, and diplomacy among others.

Combating terrorism may not only rely on counterterrorism methods, but may include other government response tactics such as counterinsurgency methods and foreign internal defense. Like counterterrorism, counterinsurgency uses comprehensive civilian and military strategies but does so in order to combat and contain political struggles of individuals or groups looking to gain some kind of territorial control (Nagl et al., 2008). Foreign internal defense denotes joint, interagency, and international efforts to combat insurgency (Millen and Metz

¹¹ It is important to note the contrary argument that terrorist groups will never outgrow the capacity of the state’s monopoly on violence, suggesting that military force may not be the only or even the best way to combat them (see for example Kydd and Walter 2006 or Gray and Wilson 2006).

2004). Together, counterterrorism, counterinsurgency, and foreign internal defense complete a repertoire of government response strategies in the face of insurgent or terrorist threat. Often, these camps overlap and in practice the arsenal of counterterrorism tools includes counterinsurgency and foreign internal defense methods. Therefore, for the purposes of this dissertation these government response strategies should be considered to fall under the umbrella of counterterrorism.

One way that IR scholars discuss the classification of counterterrorism strategy is to think of them in terms of proactive and reactive strategy. Proactive counterterrorism strategy helps governments to get in front of an attack, stopping it before it happens. Some actions associated with proactive counterterrorism might include destroying terrorist training camps, infiltrating terrorist networks, gathering intelligence, targeting terrorist financial assets and state sponsors, and criminalization of membership in terrorist organizations (Arce M. and Sandler 2005, Crelinsten 2014). Proactive strategy is effectively *preemptive* counterterrorism as it involves attacking terrorists and their assets in order to prevent, rather than in response to, an attack.

Reactive, or defensive, counterterrorism strategy, on the other hand, often comes in response to a terrorist event. Some defensive actions might include strengthening security of possible future targets, securing borders, instilling metal detectors and bomb detection equipment in public spaces, creating stronger firewalls and tech barriers, and retaliation against perpetrators and their sponsors more broadly (Behm and Palmer 1991, Ragazzi 2014). These reactive strategies are meant to *deter* future attacks by lowering the probability of success for the perpetrator or by making the severity of negative consequences higher (Arce M. and Sandler 2005).

Because of the nature of counterterrorism decision making, it may be thought of in terms of a game theoretic model where costs and benefits are calculated and tradeoffs and payoffs are considered (Arce M. and Sandler 2005). Counterterrorism may also be thought of as a strategic bargaining game between governments and terrorist groups where payoff structures are determined by the costs of action/inaction, costs of bargaining, and subsequent concessions from either side (Atkinson, Sandler, and Tschirhart 1987, Lake 2002, Sandler 2003, Bapat 2006, Crenshaw 2007).

When selecting counterterrorism strategies, states must make tradeoffs between investing in the success of counterterrorism over investing in other domestic policies. The policy tradeoff comes with the bonus of bolstered security, but often at the expense of governmental transparency and of the provision of other public goods such as infrastructure (Bueno de Mesquita 2005, Shapiro and Siegel 2010). In addition, some scholars concerned with human rights implications of counterterrorism policy argue that a tradeoff occurs when certain policies are enacted and civil liberties are subsequently curbed (Comey 2005, Dragu 2011). States must consider these tradeoffs, among other things, when constructing a comprehensive counterterrorism strategy. While they may elect to employ both preemptive and deterrent strategies at the same time, yet another tradeoff, due to financial costs and personnel and equipment requirements, occurs between the two, with deterrence most often coming out on top.

States must also grapple with the security tradeoffs that occur when engaging with and especially when affording concessions to terrorist groups. Since the interaction between states and terrorist organizations is strategic, governments must be careful of externalities associated with “more accommodative actions” such as sympathizing with terrorist support bases in order to sway their loyalty, using lower levels of physical force to maintain lower casualty counts, and

general concessions regarding assets, operations, and terrorists' political goals (Siquiera and Sandler 2006; Rosendorff and Sandler 2005, Kydd and Walter 2006). Concessions are particularly common in incidences of suicide terrorism, which Robert Pape (2003) writes "has probably encouraged more terrorist groups to pursue even more ambitious" campaigns.

Certain conceptualizations of counterterrorism approaches seek to compile related counterterrorism tools, actions, and responses as means of providing effective strategy for combatting terrorism, while minimizing certain tradeoffs and maximizing the intended outcomes. Two such approaches are classified as the criminal justice model and the military model. As suggested by their names, the criminal justice model of counterterrorism employs a predominantly deterrent criminal-legal strategy to combatting terrorism seeking to minimize the tradeoff between security and liberty, while the military model emphasizes preemptive and deterrent physical prowess and the use of force to maximize the security outcome while minimizing the bargaining leverage and capacity of the terrorist organization (Bhoumik 2004, Bapat 2011).

In the criminal justice model, police and investigative agencies carry out the primary responsibility of bringing alleged terrorists to justice, with the additional intent of deterring future terrorism. Other players in the criminal justice model include law makers, the courts, justices, and prisons, which all play a crucial role in designing legal framework and following through on the prosecution, detention, and conviction of suspected terrorists. The main argument of this model is that a comprehensive anti- and counterterrorism strategy should rely predominantly on the respect and integrity of democracy and the scope and prescriptions of the criminal-legal system and should not resort to extra-legal approaches to combat terrorism.

The criminal justice model views terrorism as a crime. In the criminology literature, terrorism is often studied through the lens of general or structural strain theory, which posits that grievances with social realities, such as material deprivation, problems associated with globalization, ethnic and religious conflict and oppression, and other socio-economic problems, are the major causes of the crimes that we associate as falling under the umbrella of terrorism (Agnew 2010). In this understanding, terrorism, as defined, consists of serious infractions, such as murder, bodily harm, kidnapping, and other violent crimes in order to inflict harm on a civilian audience to achieve a political or ideological goal (Miller 2009). In this regard, the important distinction between terrorist crimes and other criminal acts is motivation.

While the international relations and legal literature depart from the general strain theory of criminology, they do admit that criminal justice models of counterterrorism work under the assumption that terrorism is a crime which aims to threaten public safety. In all three literatures, criminal justice agents pursue and prosecute criminals suspected of terrorism through law enforcement measures and punish only those found guilty of committing a crime (Crelinsten 2002). Crimes associated with terrorism violate the laws of the state within state jurisdiction, against that states' citizens, directed at the states' national security, or are "intended to have substantial effects within its borders (even if taken outside the borders; Feldman 2002)."

Because the state must act within its jurisdiction through its own legal system, the state exercises extreme restraint with regard to its monopoly on violence, instead employing criminal-legal strategies to deter, detain, punish, and provide retribution in the wake of a terrorist event. The state is bound by domestic legal institutions and, especially in the case of democracies, rule of law that restrict its ability to use violence against perpetrators and only allow punishment of individuals who have been tried in a legal court system and found guilty. Through a criminal

justice model of counterterrorism, states seek to uphold individual rights and civil liberties and preserve all democratic principles and institutions.

Since the criminal justice model views terrorism as a crime, or series of crimes, this counterterrorism approach necessarily rests on the assumption that criminal punishment can be a deterrent for future terrorism. Actions in the criminal justice toolkit such as detention, criminal trial, and prison are set for the purposes of condemnations of criminal terrorist actions, but are hopefully severe enough to “deter future bad conduct (Chesney and Goldsmith 2008).” In addition, the intelligence gathering processes of the criminal justice model work to identify dangerous terrorist operatives and bring them to trial signaling to the existing terrorist groups both a drop in probability of success of future attacks and an increase in the likelihood of negative consequences for carrying out an attack (Crelinsten 1998).

Many have questioned the effectiveness of the criminal justice model at deterring future terrorism, citing that some terrorists are not deterred by punishment (Chesney and Goldsmith 2008, Kroenig and Pavel 2012). Others worry about the inability of the court systems to properly serve justice, especially in states where governments are less accountable to their citizens (Steven and Gunaratna 2004). This has led some states, and scholars, to be more inclined toward the more severe, yet somewhat less structured approach of the military model of counterterrorism, especially in the post-9/11 context.

The use of military force to respond to terrorism has, in conventional wisdom, been viewed as a last resort strategy, or, at the very least, as secondary to criminal-legal strategies. Liberal state responses to terrorism must be “well-defined and controlled,” and should exhaust diplomacy and the legal institutional framework inherent to Western democracies (Chalk 1998).

However, the bureaucratic obstacles of the criminal legal system create severe challenges, such as those mentioned in the previous section, to the prevention and deterrence of terrorism.

Where the criminal justice model focuses on protection of civil liberties and individual rights as embodied by the rule of law, the military model focuses on security and protection of the state and its citizens as embodied in the rules of war (Crelinsten 1989b). The military model, also called the war model, is conceptually applied when terrorism concerns are persistent, great in magnitude, and/or imminent and has the purpose of suppressing and eliminating the enemy, specifically terrorist groups and threats (Chesney 2006, Murphy 2009). The main objective of this approach to counterterrorism is to infiltrate and incapacitate enemy groups, terrorists, by employing military tactics up to and including maximal force. From this view, terrorism takes on a strategic dimension, where it is no longer a crime but an act of war and a threat to national security.

Contrary to the criminal justice model, the military model of counterterrorism encourages states to exercise its monopoly on violence in order to effectively eradicate terrorists and subvert their political goals (Crelinsten 2002). States must be careful to maintain legitimacy in their choice to use violence against terrorist perpetrators by staying as close as possible to the confines of democratic principles such as civil and constitutional rights and rule of law. The military model allows for some flexibility in states' capacities to pursue, detain, and punish terrorists even if these strategies fall just outside of conventional civil-criminal expectations and procedures (Neuman 2004).

Democratic states must be particularly mindful of audience costs associated with employing the military model. Public opinion is significantly affected by terrorist incidents, often inciting a need for the feeling of greater public security. States may acquiesce to the

demands of their citizens, employing military strategy for security gains, but must be mindful of the negative public consequences that may follow if the state violates the public's expectations of appropriateness in counterterrorism strategy. Most concerning for the state is striking a balance between the public perception of security and its perception of the preservations of human rights and liberties (Kielsgard 2005).

One way the state helps guide public perception of a military counterterrorism approach is through its framing of terrorism and terrorists. The military model of counterterrorism views terrorism as an act of war and terrorists as combatant enemies. This makes combatting terrorism through this framework particularly complex because wars are generally fought between states, while terrorist organizations *usually* represent subnational or non-state actors. By identifying the opposition as “illegal enemy combatants,” the military model attempts to create a tangential category of and to legitimize action against opponents who “use stealth and do not wear uniforms or insignia” and orchestrate events that call for an unequivocal “doctrine of military necessity (Crelinsten 2014; Roth 2004).” Essentially, by identifying terrorists as enemy combatants, the military model generates an obligation to act in the name of a desperate humanitarian cause.

The doctrine of military necessity comes from international humanitarian law (IHL) and is fundamental to the legitimization of aggressive and violent state action including warfare. Recall that the criminal justice model sets its foundation in adherence to IHL, however, the military model of counterterrorism has not always looked to IHL for guidance in executing its strategies and operations. Ronald Crelinsten (2009) writes,

“International humanitarian law, including the Geneva Conventions, was not usually a part of the discourse since a war model of counterterrorism was not the norm. When international humanitarian law was discussed, it was usually in the context of explicitly excluding it as irrelevant to

counterterrorism. Since 9/11, international humanitarian law has come under increasing scrutiny as critics of the “War on Terror” attempt to develop a legal framework for a primarily military approach to counterterrorism.”

Unlike the criminal justice model, which stresses the importance of upholding democratic and humanitarian principles above all else, the military model emphasizes the importance of devastating and eradicating terrorism, and is willing to bend, reconstitute, and even forgo the rule of law to do so (Taft 2003).

As does the criminal justice model, the military model has its limitations and deficiencies, the first being potential effectiveness. Many human rights groups as well as law enforcement actors doubt the ability of military operations and war to effectively combat terrorism citing that counterterrorism should be carried out through criminal justice actors and domestic preparedness programs (Crenshaw 2001). At the same time, some scholars have argued that one of the goals of terrorism is to provoke the state into using asymmetric military force to gain sympathy for their cause and effectively counteracting the strategy’s effectiveness at incapacitating terrorist groups (Collins 2004, Duyvesteyn 2008).

In addition to the criminal justice and military models, there are other ways to conceptualize state responses to terrorism. Yonah Alexander (2002), for example, writes that there are seven basic pillars of counterterrorism policy. Although those are written for the US, they are broadly applicable for most democratic states and have been loosely applied in academic research to states in Western Europe, Israel, and India (see Bhounik 2004, van Dongen 2010, De Graaf 2011). The first pillar encourages rule of law to prosecute terrorist suspects and to criminalize all acts associated with terrorism; this includes a strengthening of domestic antiterrorism laws. The second pillar affirms a non-concessions policy, stating that the ascension to terrorist demands would only further endanger the lives of American citizens (National

Security Decision Directive No. 207, 1986). The third pillar emphasizes the importance of intelligence collection in the detection, deterrence, prevention and apprehension of terrorists and encourages coordinated efforts among law enforcement agencies worldwide. Diplomacy efforts make up the fourth pillar as it encourages international cooperation and the implementation of common anti- and counterterrorism policies. The fifth pillar sets countermeasures and penalties, such as sanctions and legal prohibitions, for the sponsorship of terrorism, including state sponsorship. The sixth pillar affords the financial, physical, and technical security necessary to combat terrorism and prevent future attacks. Finally, the seventh pillar commits to coordination and collective measures among agencies and organizations that are responsible for counterterrorism measures.

This conceptualization, however, is compatible with the criminal justice and military typology. For example, the most visible of the pillars are pillars one and six, criminal-legal sanctions and physical security measures. Criminological and legal theory suggests that the deterrence of terrorism may be best accomplished by establishing a comprehensive set of criminal prohibitions, yet historical evidence suggests that terrorists are not deterred by criminal sanctions and prosecutions (Dickinson 2002, LaFree and Hendrickson 2007).

Governments may alternatively or simultaneously choose to combat terrorism through use of military force, pillar six; the line of thought being that most Western nations, especially the United States, have more extensive military capability than any terrorist organization. The purpose of a military response is more about the restraint of terrorism than the preservation of rule of law and liberal democracy, as is the case with criminal-legal responses (Pedahzur and Ranstorp 2001). However, historical experience has shown that military force is only sometimes effective in countering and deterring terrorism. In addition, use of military force in international

responses to terrorism comes with great considerations and externalities that include consideration of humanitarian and international law, injury and loss of lives, massive financial burden and property damage, and infringement of state sovereignty. Just as in the criminal-military typology, Yonah's pillars imply a relationship between the type of response and the outcome in terms of deterrence or preemption of terrorism but does not fully theorize or test it.

Conclusions

Agreeing to an acting definition of terrorism is important for constructing the guidelines which not only help to identify terrorist acts and organizations but also help to understand which strategies might best combat it. If terrorism is defined as the premeditated or threatened use of violence by an individual or group to obtain a political or ideological objective through intimidating or inciting fear in a larger audience beyond the immediate victims, then states must consider what types of strategies, especially in the criminal-legal and physical force or military frameworks, would work best to not only prevent or deter future terrorism, but also to reshape political and ideological grievances that may lead to extranormal violence in the first place. The next chapter presents these models of counterterrorism in the context of history, policy, and practice in the United States.

Chapter 2: U.S. Counterterrorism Responses

Historians trace U.S. early experiences with terrorism to September 6, 1901, when President William McKinley was assassinated by Leon Czolgosz. This display of first-wave anarchist terror represented one of the first domestic terrorism incidences in the U.S. and led to President Roosevelt's call for a "worldwide crusade to exterminate terrorism everywhere (Rapoport 2002; Thornton 2006)." One of the first major transnational terrorism attacks against the U.S. was recorded in New York City on Wall Street in 1920, when a horse drawn cart set off a bomb killing more than 30 people, injuring several hundreds more, and causing over \$24 million in damage (Barron 2003).

Despite these early incidences, terrorism events before the 1970s were too infrequent and too low in magnitude to be considered a major threat to national security (Omelicheva 2010). However, moving into the 1980s, terrorism against the United States had become increasingly international with nearly 140 transnational attacks including a series of bombings targeting the U.S. Embassy, its annex, and Marine barracks in Beirut, the U.S. Embassy in Kuwait, the Rome and Vienna Airports, and a popular discotheque in Berlin. These events signified a new era of frequent terrorist attacks against U.S. national interests with greater property damage, injuries, and casualties. This wave of terrorist incidents forced the government to take more intense and resolute response strategies, such as economic sanctions and military force, up to and including conventional warfare (Smith and Thomas 2001). It also highlighted the need for a comprehensive counterterrorism strategy that would employ all of Yonah's pillars, a strategy that would not be reached until after 9/11 when the dimension of the *perception* of terrorist threat grew to its greatest ever (Nacos, Bloch-Elkon, and Shapiro 2007).

Criminal Justice Responses to Terrorism in the U.S.

One of the first major attempts at criminalizing terrorism came with the Alien and Sedition Acts of 1798 (Martin 1996). The Sedition Acts had an intention securing America from immigrants deemed “dangerous to peace and safety,” for which the consequences were imprisonment and deportation. Though these acts did not mention ‘terrorism’ explicitly, requirements of individuals to “register aliens,” and to “restrain, secure, and remove” citizens of “hostile nations or governments,” as well as the outlawing of the act of or conspiring to direct opposition at “any measure of the government of the United States” and making false statements against the government, implies some preoccupation with terrorism, at least conceptually.¹²

Since then, and often coinciding with the declaration of war, there has been additional legislation outlawing acts associated with terrorism, including the Espionage Act in 1917 (18 U.S. Code Chapter 37), which outlawed conspiracy, interference with foreign commerce, and counterfeiting, and established the criteria for obtaining a search warrant, and the Biological Weapons Anti-Terrorism Act of 1989 (especially 18 U.S. Code 175) which defined biological warfare and afforded criminal penalties for buying, selling, and manufacturing any biological agents for use as weapons.¹³

However, these pieces of legislation neither defined the crime of terrorism explicitly, nor set standards for the actions of counterterrorism actors or punishments for perpetrators. That changed in the 1970s-1980s when the U.S., moved by a series of assassinations, air-jackings, kidnappings, hostage takings, and bombings directed at the U.S. interests and citizens abroad,

¹² Citations taken directly from the Alien and Sedition Acts of 1798, which are comprised of the Naturalization Act, the Alien Enemies Act, the Alien Friends Act, and Sedition Act. Full text of this legislation can be found at University of Washington Libraries: http://library.uwb.edu/Static/USimmigration/1798_alien_laws.html

¹³ This is not an exhaustive list of laws passed relating to the deterrence of terrorism. The Espionage Act can be read in full at <https://www.law.cornell.edu/uscode/text/18/part-I/chapter-37>. The Biological Weapons Anti-terrorism Act can be read in full at <https://www.law.cornell.edu/uscode/text/18/175>

approved several pieces of legislation which criminalized terrorism and set guidelines by which counterterrorism actors could investigate, detain, and punish terrorist suspects. These policies, expanded upon below, were coupled by the international ratification of counterterrorism policies including the UN Convention on the Prevention and Punishment of Crimes against International Protected Persons, including Diplomatic Agents in 1973, the UN Convention against the Taking of Hostages in 1979, and the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation in 1988.¹⁴

Domestically, as early as 1985, the U.S. included in its Code of Laws (U.S. Code) a criminal definition of terrorism. While the criminal code did not outline appropriate actors and responses to terrorism, it did define terrorism as “premeditated, politically motivated violence against noncombatant targets by subnational groups of clandestine agents (U.S. Code Title 22, Chapter 38, Sections 2656a-i).” A year later, in 1986, the first comprehensive terrorism legislation was enacted in the U.S., known as the Omnibus Diplomatic Security and Antiterrorism Act. The purpose of this act was to protect diplomatic missions, establish security provisions abroad and at sea, to coordinate terrorism related assistance, to define a reward structure for information provided which could lead to an arrest of a suspected terrorist, and to create gubernatorial bodies which oversee the countermeasures for international nuclear terrorism and collective antiterrorism measures.

Further legislation was drafted by the Clinton Administration in 1995 and 1996. The Omnibus Counterterrorism Act of 1995 (Counter Terrorism Prevention Act) was introduced by Senator Joe Biden and was the first legislation to set penalties for terrorism-related crimes including, but not limited to, kidnappings, killings, and air-jackings, and also set criminal law codes for acts of transnational terrorism affording jurisdiction to the U.S. to pursue

¹⁴ These documents can be read in full at through the UN at http://www.un.org/documents/instruments/docs_en.asp

investigations, detentions, and wire-tap authority for any individual, including non-citizens, suspected of committing or conspiring to commit a terror act. Despite its similarities to the Patriot Act, which would be introduced in 2001, this bill was never signed into law, though its propositions remained influential in the apprehension, detention, and prosecution of terror suspects over the next several years (Lewis 2005, Raimo 2011).¹⁵ The Antiterrorism and Effective Death Penalty Act, signed into law April 1996, expanded the legal understanding and scope of crimes associated with terrorism, as well as increased the severity of punishments for these associated crimes. It denied habeas corpus and made drastic changes to other criminal procedures for suspected terrorists, prohibited financial transactions with terrorist organization, suspended asylum procedures for suspected alien terrorists, afforded mandatory victim restitution, authorized law enforcement officials to arrest and detain illegal or felonious aliens, and established the punishment of the death penalty for those engaged in acts associated with terrorism.¹⁶

During the pre-9/11 era, the criminal justice system was only equipped to prosecute offenders with terrorist motivations if they had committed one of the following types of crimes: hijacking, murder, unlawful possession of nuclear material and weapons of mass destruction, illegal firearms charges, hostage-taking, conspiracy, assassination, and kidnapping, among others. During this period, the courts lacked the capacity to prosecute or determine punishments for individuals associated with or providing material support to known terrorist organizations, or individuals who plotted attacks but did not follow through (Chesney and Goldsmith 2008). In

¹⁵ Lewis argues that the Omnibus Counterterrorism Act of 1995, though not officially signed into law, paved the way for the Anti-terrorism Act of 1996 (P.L. 104-132), and the U.S Patriot Act of 2001 (P.L. 107-156). Raimo suggests the Act provided the basis for the future of prosecution of terrorists for acts committed overseas.

¹⁶ The defined acts punishable by death penalty, or imprisonment of no less than 20 years, to include the malicious destruction or attempt to destroy any property owned by the U.S. resulting in the death of any person. The Antiterrorism and Effective Death Penalty Act can be read in full at <https://www.uscis.gov/sites/default/files/ocomm/ilink/0-0-0-8598.html#0-0-0-961>

fact, it was not until after 9/11 that U.S. Code changed to include provisions making providing material support or resources a felony offense (18 U.S. Code, Section 2339B). In addition, the Supreme Court case of *Rumsfeld v. Padilla*, which was decided in a 5-4 vote in favor of Rumsfeld in 2004, set precedent for charging terrorist suspects, regardless of affiliation, with conspiracy as they could legally be deemed members of the global jihad movement.¹⁷ This law and this precedent allowed for trial by association of individuals who were suspected of participating in any capacity with known terrorists and terror organizations (Chesney and Goldsmith 2008).

Despite the inability of the criminal justice system to prosecute terrorists for their criminal associations, primary counterterrorism strategy in the U.S. still relied heavily on the criminal-legal system. The criminal justice strategy sought to officially criminalize terrorist actions leading to the apprehension, indictment, prosecution, and conviction of dozens of terrorist suspects before 9/11, and hundreds more following the 9/11 attacks (Marks 2006; Department of Justice, Office of Public Affairs Press Release, 2009). Some scholars argue that the criminal justice model has been the dominant counterterrorism strategy even after 9/11 (Crelinsten and Schmid 1992, Duyvesteyn 2008, Boyle 2010, Rinehart 2010). The U.S. Department of Justice (DOJ) released a statement in January 2010 that details the manner in which the criminal justice system is used to combat terrorism. First, it has been useful in aiding intelligence operations run by local and federal law enforcement agencies and the intelligence community and has done so for almost a century. Second, the DOJ has claimed to have prosecuted some several hundred suspects, including more than 300 incarcerations in U.S.

¹⁷ The case can be heard in its entirety at <https://www.oyez.org/cases/2003/03-1027>

federal prison facilities citing both preemptive and retributive apprehensions and detentions.¹⁸

Though many of the successes touted in this statement are post-9/11, legal research details many accounts of prosecutions and detentions of terrorist suspects long before the attacks. Third, the consistent use of the criminal justice model is evidenced by the continual evolution of anti and counterterrorism laws since the 9/11. More recent changes to U.S. Code include the prohibition of financial and material support of terrorist groups, later including “expert advice or assistance” (USA Patriot Act, 18 U.S. Code, sections 2339A and 2339B; Humanitarian Law Project v. Holder, 2010), the authorization of indefinite detention without trial (USA Patriot Act, section 412), the imprisonment of any individual who harbors a terrorist suspect or conceals information pertinent to a terrorism investigation (USA Patriot Act, 18 U.S. Code, section 2339), and the levy of fines and imprisonment for any individual engaged in financial dealings with any country known as supporting international terrorism (USA Patriot Act, 18 U.S. Code, sections 2332d).

These laws do not only include criminal prosecutions and penalties for individuals who have become terrorist suspects through the investigatory process, but also include sets of laws and permissions for searches and investigations of all citizens and individuals, as well as legalizing exceptionalities to constitutional rule of law. Some of these provisions include the authorization of foreign intelligence surveillance (FISA Amendments Act of 2008), the permission of “suspicionless” search and seizures of documents and electronic devices of citizens re-entering the U.S. (United States v. Arnold, 2008), the institutionalization of racial profiling in both the operations manuals and practices of the FBI and local law enforcement,¹⁹

¹⁸ This statement was released January 26, 2010, entitled, “The criminal justice system as a counterterrorism tool: A fact sheet.” The statement can be accessed at <https://www.justice.gov/opa/blog/criminal-justice-system-counterterrorism-tool-fact-sheet>

¹⁹ It is important to note that the practice of racial profiling in law enforcement for any purposes, including anti and counterterrorism, was highly frowned upon by the U.S. Department of Justice (DOJ). In fact, in June 2003, the DOJ released a publication explicitly condemning the use of racial profiling in police practice, citing that it “taints the entire criminal justice system,” and that “America has a moral obligation to prohibit racial profiling.” It was also

the indefinite detention of terrorist suspects, also called “enemy combatants” at Guantanamo Bay (Military Commissions Act of 2006, Detainee Treatment Act 2005), and the authorization of torture and “enhanced interrogation techniques” during terrorist suspect detention and questioning.²⁰

The aftermath of the September 11 attacks also led to the enactment of the Homeland Security Act (Public Law 107-296) and the creation of the eponymous department in 2002. The subsequent governmental reorganization relocated twenty-two agencies and over 170,000 employees and initiated a series of directives, including the National Response Plan (NRP), the National Incident Management System (NIMS), and a number of controversial directives involving the USA Patriot Act (Banks et al., 2008). Alongside Homeland Security operations, private sector defense and security firms were working support and assistance operations, as well as protecting “critical infrastructure assets, such as telecommunications, energy, and banking”, advancing technological and weapons capabilities, and running crucial intelligence collection campaigns (Eckert 2005).

Perhaps most important to securing the homeland are federal and local law enforcement efforts. Homeland Security and federal law enforcement operations were not only confined to investigations of domestic terrorism, but also included the investigation, apprehension, and detention of transnational terrorist plots, events, and suspects. However, homeland security

announced in this publication that the Bush administration would be the first to place a ban on the use of ethnic profiling practices in law enforcement operations (Department of Justice, Fact Sheet: Racial Profiling, June 17, 2003).

²⁰ Legal research suggests that torture became institutionalized with the Bush Administration’s establishment of Camp Delta at Guantanamo Bay (Bassiouni 2006, Mayerfield 2007). In full support of “enhanced interrogation techniques,” the Bush administration in 2002 and 2005, issued public statements in support of the memos signed by the DOJ Office of Legal Counsel, authorizing the use of torture and torture-light actions in the apprehension, interrogation, and detention of terrorist suspects (U.S. Department of Justice, Office of Legal Counsel 2002, 2005). Though the Obama administration has condemned such practices, media and news outlets have reported the continuation of such strategies (see reports from NBC News, AlJazeera, PBS News, Huffington Post, among others).

becomes increasingly expensive, especially as terrorism moves from domestic to transnational, and must effectively protect an array of vulnerable points in the homeland (Sandler 2003).

Even with all of the provisions created in the name of anti and counterterrorism since the 1990s, and especially after September 11, the question still echoes whether or not these provisions have actually helped to deter or prevent future terrorist acts. Is it reasonable to assume that organizations with fervent religious or ideological beliefs will be deterred by criminal prosecution, or even, in the case of extremist messianic organizations, the death penalty? Despite even the most extraordinary criminal provisions, in many instances, and especially in the Obama administration, terrorist suspects are still privy to their constitutional guarantees of habeas corpus, public and speedy trial, the right to an impartial jury, and are legally considered innocent until proven guilty. It is perhaps these institutional barriers that make military measures of counterterrorism seem more attractive.

Military Responses to Terrorism in the U.S.

Conventional wisdom and modern research suggests that after 9/11, the United States shifted strategy away from the criminal justice model, employing the military model of counterterrorism to fight its Global War on Terror (Boyle 2010, Rinehard 2010, Morag 2011, Erbay 2012, Crelinsten 2014). Faced with the more immediate and dangerous threat of terrorism in al-Qaeda and the Taliban, decision makers were challenged to create a post-9/11 counterterrorism strategy evolved from a criminal justice process into a “more lethal form of asymmetrical warfare” that was able to evade the boundaries and restrictions of the criminal justice system (Rinehart 2010; Solis 2016).

Recall that the military model of counterterrorism considers the use of force to be a last resort strategy, especially for democratic states. The actual history of counterterrorism strategy in

the U.S. reveals the recurrent use of military force in response to terrorism, and not always as a last resort. Though the invasion of Afghanistan after the attacks of 9/11 brought new considerations to military responses to terrorism, an array of covert and overt military action has been taken to combat terrorism since at least WWII including cruise and air missile strikes, ground attacks, surgical attacks, and covert low-intensity operations (Posen 2001, Alexander 2002, Byers 2002)

In 1985, the U.S. responded to the PLF hijacking of Italian cruiseship MS Achille Lauro with the deployment of U.S. Navy SEAL Team Six and Delta Force to attempt to rescue the passengers, many of which were American tourists (Eggen 2003). In 1989, notorious narco-terrorist Pablo Escobar plotted the bombing of Avianca Airliner 203 and was deemed an enemy of both the U.S. and Colombian governments. Escobar was pursued in a manhunt by a Joint Special Operations Command of the U.S. military before he was killed by Colombian Security Forces in 1993 (Lubasch 1992, McFadden 1993). David Hicks, an Australian accused of attending an al-Qaeda training camp and of creating a terrorist recruitment video before 2000, was held for seven years at Guantanamo Bay Detention Camp before being tried and convicted in military commission; a conviction which was later overturned (Glaberson 2008). These are just a sprinkling of examples in which the U.S. has used military force against terrorism before 9/11.

The post-9/11 War on Terror may have helped to eliminate previous institutional and legal barriers to use of force in counterterrorism operations. Perhaps one of the most important pieces of public law was the U.S. Patriot Act (Pub. Law 107-56) which helped to alleviate some of the legal barriers to counterterrorism response including relaxing certain civil liberties in the name of national security, establishing anti-money laundering and material support of terrorism

laws, giving more investigative power to law enforcement agencies, especially those in charge of border security, and increasing information sharing between intelligence and law enforcement agencies.²¹

While the Patriot Act does give U.S. officials more flexibility in pursuing suspects for the sake of terrorism prevention, it does not explicitly address the legality of use of military force against suspected terrorists.²² However, the U.S has not been completely remiss in its legal justifications for use of military force abroad to combat terrorism. It has invoked the principle of self-defense to legitimize its military action against terrorist groups like al-Qaeda and, more recently, the Islamic State. In April 2015, the Department of Defense delivered a speech laying out the legal framework for all instances in which military force have been used since 9/11, including recent operations and air strikes in Syria.²³ In this speech, and in many others before, the U.S. government cites UN Charter, Chapter VII, Article 51 which affords states the “inherent right of individual or collective self-defense” in the event of an armed attack and permits the state to use any action “it deems necessary in order to maintain or restore international peace and security.”

The rhetoric of the War on Terror, accompanied by the justification of self-defense was not only meant to gain the sympathy and support of an international audience, but also to assure the American public of the necessity for military action in response to an historic terrorist attack. The Bush administration framed the War on Terror as an opportunity for the country to “unite in steadfast determination and resolve” in the “monumental struggle of good versus evil.” The

²¹ The U.S. Patriot Act can be read in full at <https://epic.org/privacy/terrorism/hr3162.pdf>

²² It does discuss appropriation of funds for military establishments and operations abroad while engaged in Operation Enduring Freedom.

²³ Delivered April 10, 2015 by Stephen W. Preston, General Counsel of the CIA and former General Counsel of the U.S. Navy, at the Annual Meeting of the American Society of International Law. The speech is entitled, “The legal framework for the United States’ use of military force since 9/11.” The transcript is available at <http://www.defense.gov/News/Speeches/Speech-View/Article/606662>

struggle the administration was referring to was the fight against terrorism, with the U.S. embodying the “good” and al-Qaeda, the terrorists, representing the “evil” that sought to destroy U.S. “freedom” and “democracy.”²⁴ These words were met with overwhelming public approval and the frequent framing of “good versus evil” helped to cultivate and sustain a level of support for both the Administration and its defense policy decisions (Entman 2003).

Just as Operation Enduring Freedom was not the U.S.’ first military response to terrorism, it was also not the first time the U.S. had invoked its right to self-defense in order to retaliate militarily against terrorist actions. Rhetoric of ‘us versus them,’ ‘good versus evil,’ ‘life or death’ and the duty to self-defense can be seen at least as far back to at least the 1980s and even before. Particularly, the paradigm of self-defense has allowed the United States to act with force in response to terrorist bombings of the U.S. embassy in Beirut in 1983, the bombings of a Berlin discotheque in 1986, an assassination attempt against President Bush in 1993, and the 1998 bombings of the U.S. embassies in Kenya and Tanzania to name only a few. In each of these cases, the U.S. declared an obligation to protect its citizens and its homeland from terrorist acts and its inherent right to self-defense in order to employ and to justify a military model of counterterrorism. Public support garnered through this rhetoric remained crucial to the continued operations and financing of military responses to terrorism (Sapiro 2003).

In addition, this rhetoric has helped to garner various displays of support from the international community. The U.S. Department of State, in its statement on the first 100 days in the War on Terror, reported that the U.S. received an “outpouring of support” from the “collective will of the world.”²⁵ In fact, 196 countries supported initial operations in 2001 to

²⁴ This speech was delivered by President Bush on September 12, 2001. It’s transcript can be accessed in the Department of State archive, <https://2001-2009.state.gov/coalition/cr/rm/2001/5042.htm>

²⁵ This statement was released on January 14, 2002. The executive summary can be accessed through the State Department Archive at <https://2001-2009.state.gov/s/ct/rls/wh/6947.htm>.

interrupt terrorist financial networks, and in April 2003, nearly 50 countries had joined the Coalition of the Willing. Even before 9/11, nations, as well as some non-governmental organizations, supported counterterrorist military operations in Sudan, Iraq, Iran, and Yemen, to name a few, as early as the 1970s (Allen 1992, Prunckun and Mohr 1997, Marrazzo 2001, Benjamin 2010).

In some ways this support has led not only to a general acceptance of military responses to terrorism, but also to wide internalization of U.S. style counterterrorism policy and strategy. While the military model has received fairly harsh criticism and opposition, its utilization by countries like the U.S., Israel, Russia, and Turkey throughout the last two decades has shifted the general trend of counterterrorism strategy worldwide. The U.S. and several European Union states have routinely cooperated militarily, especially in the areas of counter-*jihadi* components of counterterrorism strategy. Individually, these states are using military means, alongside law enforcement investigations, to eliminate terrorist financing, to stop the flow of foreign fighters, specific to ISIS, and to improve ongoing humanitarian crises as a result of terrorist organizations and weak government capacities to subdue them (Davies 2017).

Global counterterrorism measures in response to ISIS demonstrate an additional component of the military model; the military is not only used in matters of armed conflict with regard to anti- and counterterrorism, but is also used for other internal and external response types. The military may engage in joint military operations of law enforcement trainings abroad to help local law enforcement and militaries increase their capabilities to combat terrorism in their home countries as the U.S. has done in Eastern Europe and Central Asia, among other areas. Special Forces and intelligence operatives generally work to defeat terrorist organizations through intelligence collection and dissemination both to the U.S. military and to other

departments as well as to local organizations and to law enforcement of the host countries (Readman 2004). The military also helps to tighten and secure borders, as well as to monitor internal movement alongside local law enforcement in host countries. Often, military operatives abroad take on actions of public diplomacy and community building projects in order to establish a positive image about their involvement in counterterrorism operations in host nations abroad.

The Call for Global Counterterrorism Strategy

Recent advances in global counterterrorism strategy reflect the long history of the United States calling for a coordinated global response to the terrorist threat; a call which dates back to at least the proposal of the League of Nations in 1937 (Deflem 2006). As terrorism began to intensify in the later half of the twentieth century, international counterterrorism efforts increased as well. In the wake of 9/11, global calls for cooperative counterterrorism saw states responding with varying degrees of support and condemnation of terrorism. While some were resistant to the rhetoric of the ‘axis of evil’ and rebuked the immediate military action of the U.S., others, such as some NATO nations and Australia, provided immediate combat support to U.S. military operations in Afghanistan and Iraq (Buckley and Fawn 2003). Though several states entered into an international ‘Coalition of the Willing,’ a military and political alliance against state sponsored terrorism in Iraq, the U.S. remained at the forefront of decision making in what may have been the only modern example of an international counterterrorism regime outside of the United Nations (UN) (Finn 2010).

The UN officially adopted a “Global Counterterrorism Strategy” (GCS) on September 8, 2006, nearly five years after the 9/11 attacks on the U.S. For years the U.S. pushed UN states to generate and engage in concerted efforts to combat terrorism globally through the creation of type a counterterrorism regime whose “common strategic and operational approach” to fighting

terrorism would aim to collectively “prevent and combat” it.²⁶ Prior to the adoption of the GCS, and even more so, prior to the events of 9/11, the U.S. made perfunctory attempts to gather allies into a “anti-terror regime” with common goals of delegitimizing rogue states and terrorists, their demands and their actions, preventing “indiscriminate harm” from civilians and non-combatants as policy, and committing to lowering the costs of counterterrorism while simultaneously increasing the costs of committing terrorist acts (Boyle 2008).

After 9/11, the U.S. deemed an anti-terror coalition as a necessary component of its grand strategy in the War on Terror. It petitioned the UN Security Council to approve Resolution 1373, which called for systematic international cooperation in the prevention of terrorism and was passed unanimously (Terlingen 2010). What the U.S. had in mind as far as follow through on this petition differed greatly from pre-9/11 plans for a counterterrorism regime. Instead, the U.S. centered its efforts on the coalition of the willing, whose primary purpose of combatting terrorism remained the same, but the means by which that would be accomplished had shifted entirely. This post-9/11 counterterrorism coalition still sought to delegitimize terrorism but also focused on policing rogue states, promoting democracy and democratic transition, and preventive war and preemptive action (Westphal 2003, Boyle 2010).

The Coalition of the Willing was highly criticized as a political tool which provided legitimacy to the Iraq War rather than hailed as a genuine mechanism in international counterterrorism collaboration. Critics were quick to point out that most of the 46 states in the coalition were “small, poor countries, with no obvious political stake in the war (Newnham 2008),” though large-economy members included states such as Australia, United Kingdom, and Spain. This coalition was not a formal-legal organization, but was a military alliance created to

²⁶ Citations taken from the UN Counterterrorism Implementation Task Force official webpage on the UN Global Counterterrorism Strategy. It can be read in full at <https://www.un.org/counterterrorism/ctitf/en/un-global-counter-terrorism-strategy>

manage the risk of today's terrorist threats. However, without the formal-legal regulations, as exist in bodies such as the UN and NATO, to ensure compliance from its members, or the absence of the coalition's formation around common interest or international norms such as collective international security, states routinely "pulled out of the coalition" (Aslam 2013; Williams 2009). Specifically, Operation Iraqi Freedom lacked broad support of the coalition members and left the U.S. to develop policy and pursue military counterterrorism strategy without the backing of the coalition at large (Aslam 2013).

Whether it be applied force, intelligence gathering, or humanitarianism, the role of the military in counterterrorism measures operates within the confines, or at least alongside, an existing rules of engagement. In some ways, the military model of counterterrorism is subject to the same, or similar, regulations that set the standards for criminal justice measures. Military measures of counterterrorism must still be aware, if not vigilant, of U.S. constitutional guarantees and practices, and of the boundaries of international law. The next section discusses the limits that existing legal frameworks impose on both the military and criminal justice models of counterterrorism.

Counterterrorism and the Observance of Domestic and International Law

Both the criminal justice and military models are bound by existing precedents, regulations, and laws. In criminal justice counterterrorism responses, the U.S. is bound by rule of law and the U.S. Constitution and can only exercise its right to violence and punishment on those suspected and found guilty of committing a crime (Crelinsten 2009). The observance of democratic principles and foundations are revered as fundamental in the fight against terrorism, and the primary consideration of counterterrorism "must be the protection and maintenance of liberal democracy and the rule of law" overriding even the importance of eliminating terrorism

(Clutterbuck 2004; Steven and Gunaranta 2004). Thus, terrorism is seen as a form or combination of criminal activities that can be punished and defeated through criminal justice laws and institutions.

As such, the United States is required to abide by all domestic laws in the pursuit and prosecution of terrorist suspects and afford them all rights guaranteed by the constitution. Terrorist suspects are effectively awarded equal protection under the law and, like any other criminal suspect, are presumed innocent until proven guilty. Under this equal protection guarantee and under title 42 of U.S. Code 1981, all persons, including terror suspects, have the same right to make and enforce contracts, to sue, to give evidence, to be guaranteed security, sentences, and punishments commensurate with convictions regardless of race or other prejudice, and are still guaranteed the right to due process, habeas corpus, speedy and public trial and other rights enumerated in the U.S. Constitution.

In addition, where counterterrorism activities, either criminal justice or military, transcend borders and involve incidences of transnational terrorism, all states, including the U.S., must adhere to international law, including international humanitarian law (IHL) and the Geneva Convention. IHL does not specifically define terrorism but does specifically prohibit “measures of terrorism” and “acts of terrorism” against persons not taking part in hostilities. While strict interpretation of IHL reads that these rules apply only to the context of international armed conflict, recent and more loose interpretations of the law argue that its regulation includes any act of violence against civilians or individuals no longer taking part in hostilities (i.e., military personnel no longer engaged in combat; Saul 2017).²⁷

²⁷ Special attention should be paid to the fact that the International Committee of the Red Cross promotes this looser interpretation of IHL. A Q&A of its understanding of IHL and a report on the applicability of IHL to terrorism can be read in full at: <https://www.icrc.org/eng/resources/documents/faq/terrorism-faq-050504.htm>
<https://www.icrc.org/en/document/applicability-ihl-terrorism-and-counterterrorism>

Regardless of whether one subscribes to a strict or loose interpretation of IHL, the U.S. brought terrorism, counterterrorism, and IHL into the same conversation when they were criticized by human rights groups, legal officers, and political pundits about extended military operations in Iraq and Afghanistan as part of the War on Terror. The U.S. submitted to the Geneva Conventions in that it treated the Taliban as a *de facto* state party, legitimizing sustained military action against it, but at the same time declared that other enemies, such as members of al-Qaeda, were “unlawful enemy combatants”, not representatives of any state and therefore were not under the protection of standards of treatment and detention laid out in the Geneva Convention (Fischer 2006; Brooks 2004, Murphy 2006).

Common Article 3 of the Geneva Convention, also known as the Treatment of Prisoners of War, declares that states are bound to a specific code of conduct in the pursuit, detention, interrogation, and so forth, which requires the humane treatment of suspects, free from discrimination, unnecessary infliction of bodily harm or illness, violence to life and persons (murder, mutilation, and torture), and from the personal degradation of undignified treatment, all while ensuring that the apprehended individual is properly cared for in a manner of health and receives all liberties regarding due process and impartial adjudication.

Under this article, those falling into the category of prisoner of war must be guaranteed certain rights. Though the U.S. had once argued in favor of the Taliban being considered representatives of the state of Afghanistan to justify military counterterrorism measures, later, then Secretary of Defense Donald Rumsfeld, argued that it was a stretch to give Taliban the protections of Article 3 of the Geneva Conventions. In response to criticisms of the treatment of Taliban and al-Qaeda detainees, Rumsfeld spoke,

The Taliban did not wear distinctive signs, insignias, symbols or uniforms ... To the contrary, far from seeking to distinguish themselves from the civilian

population of Afghanistan, they sought to blend in with civilian non-combatants, hiding in mosques and populated areas. They [were] not organized in military units, as such, with identifiable chains of command....²⁸

He continued with the conclusion that since they did not present themselves as traditional military combatants, they could not be treated as such and could not be guaranteed the protections of prisoner of war status. The legal and political community, though often critical of U.S. policy regarding the War on Terror, has yet to agree on the applicability of IHL to transnational terrorism and counterterrorism law. More relevant than a discussion of IHL, is, perhaps, the relationship between counterterrorism and domestic law.

It is clear that a respect for rule of law and democracy must be at the forefront of criminal justice approaches to counterterrorism, which necessarily implies that terrorism be treated as a crime, defined by and subject to the existing criminal legal system. Terrorism is not defined in U.S. legal code as a criminal act in and of itself, but rather, certain acts associated with terrorism such as kidnapping, hostage taking, murder, and assault fall under the purview of the criminal justice system. To be precise, one cannot be prosecuted under U.S. penal code for terrorism by definition, but must be prosecuted for the individual crimes committed that may be associated as terrorist acts. Therefore, suggestions and questions of motives and intentionality, which are crucial to the identification of an act as terrorism, become overshadowed by a preoccupation with criminal-legal procedure and application of existing categorizations of actual crimes committed.

A Complex Relationship of Government Response with Terrorism

Given that the criminal justice and military models are conceptually designed to combat terrorism, we must ask under what conditions should either model be employed, how terrorism

²⁸ Full transcript of this speech is no longer available, but this specific citation is taken from a 2007 CRS Report for Congress by Jennifer K. Elsea.

impacts each of these models and, most importantly, how effective is each approach is at deterring future terrorism. Conventional wisdom and research suggests that prior to 9/11, the criminal justice model was the primary, if not only, approach employed by the U.S. to combat terrorism (Steven and Gunaratna 2004). International Relations and International Law research even suggests a pattern of “September 10 thinking” and “September 12 thinking (Crelinsten 2009, 2014; Palin 2015).” In this frame, September 11 signaled a paradigmatic shift in strategy away from the criminal justice model toward the military model for the United States with regard to combatting terrorism. Before 9/11, decision makers had greater concerns of human rights and civil liberties and protection of the rule of law and were highly critical of displays of force in responding to terrorism, exemplifying Crelinsten’s (2009) “September 10 thinking.” In fact, decision makers were so deterred by military responses to terrorism that they often employed the criminal justice model “even at the expense of reduced effectiveness of counterterrorist measures (Steven and Gunaratna 2004).” After 9/11 and the ensuing War on Terror, decision makers believed the threat of terrorism to be persistent and imminent, incapable of being deterred through law enforcement means, and committed to the mind-set that the enemy can only be deterred through displays of maximal force, exemplifying “September 12 thinking.”

This dichotomy of thought suggests that the criminal justice model was the approach used by the U.S. until 9/11. However, in practice, counterterrorism measures in the United States are and have been carried out by a vast network of agents, including law makers and legislators, bureaucratic and law enforcement agencies, the intelligence community, civilian and defense contractors, and the military. The agencies involved in counterterrorism are not limited to the most obvious Homeland Security and FBI, but, in fact, include efforts from most governmental agencies including the Department of Treasury, Department of State, Department

of Defense, Department of Energy, Department of the Interior, and the Department of Agriculture to name a few. In fact, in 2006, the U.S. government issued a memorandum calling for “cooperative national security and counterterrorism efforts” along U.S. borders from the coordinated efforts of the Departments of Homeland Security, Interior, and Agriculture.²⁹

While of these actors play a crucial role in combatting terrorism, especially in the homeland, exploration into the historical post-attack responses of the U.S. reveal many instances where the military was deployed in response to a terror threat, either as the sole actor or in conjunction with these criminal justice actors. This brings into question the validity of this dichotomy (September 10 and September 12 thinking) as well as the validity of the general claim that the criminal justice model is the primary, or first response, counterterrorism strategy in the U.S. (either before or after 9/11). Even in 1970s, policies emphasized criminal justice approach but “ultimately embraced a military solution because of weaknesses in that model (Macken 2011; Crelinsten and Schmid 1993).”

The criminal justice and military models are thought to be both preemptive, bringing existing terrorism to a halt, and deterrent of future terror acts. However, both models may be limited in their preemptive capabilities. The criminal justice model treats terrorism as a crime and a problem for domestic law enforcement. In this model, terrorists can only be punished for crimes that they have already committed, leaving out the possibility of retribution for evil intent. This model is limited by the laws and institutions of the federal criminal justice system, exact legal definitions of crimes, and standards of punishment and sentencing. The question of whether or not terrorists will be deterred by prosecution, but guaranteed protection of their civil liberties in the event of their apprehension is an important one. Some have asked whether or not

²⁹ This memorandum was issued and signed by the participating agencies in March of 2006. A copy of the signed memorandum is available <http://cis.org/sites/cis.org/files/articles/2010/mou.pdf>

prevention or preemption actually fit into the conceptual framework of the criminal justice model (Macken 2011).

The military model also exhibits an unexpected and complex relationship with terrorism. Some may think of the impact of terrorism as a one-shot deal; terrorist event occurs, the impact of the event leads to a government response (policy change, military action, or otherwise), and thus ends the effect of the initial event, while others have shown terrorism to have persistent effects. Again, the question of whether the model is effective at preventing terrorism is an important one.

One perspective posits increased military activity has been statistically shown to increase the supply of terrorism, rendering the military model not only ineffective, but potentially dangerous. Braithwaite and Li (2007) while demonstrating that places that experience high levels of terrorism are more likely to experience future terrorism, find that military conflict involvement is also a significant predictor of future supplies of terrorism. In addition, they find that greater military capability increases the likelihood of future attacks upon a nation. Azam and Thelen (2010) find that active military intervention from the U.S. increases the supply of terrorism in recipient countries. Furthermore, they suggest that Western democracies with interventionist policies, such as the U.S., are more likely to be the main targets of terrorist attacks. Savun and Phillips (2009) pioneered this vein of thought when they empirically demonstrated that democratic states like the U.S. are more likely to be targeted by terrorist groups because of aggressive foreign policies and military alliances.

Another perspective suggests employing the military model to be the “rationalist approach” which requires an increase in physical security to generate an outcome of change in the distribution of capabilities in favor of the state and away from the terrorists, signifying the

war model not only as the most effective preventive approach, but perhaps, the only approach (Fearon 1995, Lake 2002, Abrahms 2008). In this view, extremist groups use terrorism to elicit disproportionate responses that garner sympathy for the group and radicalizes moderates, generating greater support circles and spheres of influence. What ensues is a bargaining model where the capabilities and choices of both actors are endogenous, ultimately resulting in terrorist violence because no bargains fall within the acceptable range for the terrorist organization. As a result, “bargaining over a particular issue now is subordinated to a broader strategy of using violence to the change the relative capabilities” of the opponent (Lake 2002).

Research on terrorism also suggests that the supply of terrorism itself may have an impact on when the military model might be employed by the U.S. Where the criminal justice model may be effective in instances of “low yield” terrorism, or terrorism that is committed by repeat actors yielding smaller magnitudes of damage and casualties, the military model is likely to be more effective at combating “high yield” attacks (Bhoumik 2005; Macken 2011). High yield terrorism, or terrorism of great frequency or magnitude of damage and casualties, is “more difficult than ordinary crime” and the criminal justice system “cannot incapacitate those affiliated with” this type of terrorism (Bhoumik 2005). In fact, some proponents of the military model, including former Secretary of State George Schultz, believe that the United States must be willing to use military force, while many academics also agree that when countered with ongoing threat or armed attack the U.S. must immediately respond with force in order to eliminate said threat (Erickson 1989, Lobel 1999, Kosnik 2000).³⁰ It has even been concluded that use of military force is the most effective response to terrorism (Eppright 1997).

³⁰ Take from Schultz’s address on International Terrorism delivered October 25, 1984, published excerpts appear in the New York Times on October 26, 1984 and are available at <http://www.nytimes.com/1984/10/26/world/excerpt-s-from-shultz-s-address-on-international-terrorism.html?pagewanted=all>

Shortcomings of the Counterterrorism Models

It seems that the decision makers and academics have yet to agree on which model is most effective at countering terrorism, in general, and in the context of the U.S., in particular. The bulk of the literature seems to suggest that criminal justice measures were effective, until 9/11, at which point they became mostly obsolete (Macken 2011). At any rate, both models have been subject to harsh criticisms conceptually and in practical applications.

The criminal justice model, in any state, and especially democratic ones, works through domestic and, at times, international law to pursue justice after a terrorist attack. The overriding principle of the criminal justice response is a commitment to the protection of the liberal principles and constitutional guarantees mentioned above, as well as ensuring human treatment of detained suspects (Chalk 1998). Uncompromising adherence to these principles and to the law presents several limitations to this model.

First, all criminal acts, including acts associated with terrorism are subject to “reasonable suspicion and evidence-based criminal justice processes (McCulloch and Pickering 2009).” Much of what we know about suspected terrorists comes from the intelligence gathering process. Information that results from this process, though sufficient for intelligence-based decision making, is not always admissible in a court of law. For example, forms of hearsay, such as a witness reporting that a third party informed him of the suspect’s intent to commit a terrorist act, would not be admissible in a criminal trial, but would be important evidence in an intelligence gathering mission (Chesney and Goldsmith 2008). There is great burden on the state to produce relevant and admissible evidence against the defendant to prove his or her guilt beyond a reasonable doubt.

Second, prior to 9/11, it was nearly impossible to criminally indict someone for being a member of or providing support to a terrorist or terror organization. Of course that changed after Padilla's Supreme Court trial and when providing material support to a terrorist was made a criminal offense by the U.S. Patriot Act (18 U.S. Code Section 2339a-b). Still, the idea of trying an individual in criminal court for these offenses is met with criticism by those who argue individuals should not be punished for the acts of someone else or be tried for being "guilty by association (Cole and Dempsey 2006, Gouvin 2003)."

Third, the criminal court systems must respect due process, habeas corpus, and other civil liberties guaranteed by the Constitution and international law. In the landmark case of *Hamdi v. Rumsfeld*, Yaser Hamdi petitioned the court for the right of due process for enemy combatant detainees. The Supreme Court ruled in favor of Hamdi affording terrorist suspects, and all detainees, the right to challenge their legal status as enemy combatant, as well as imparting upon them full legal rights bestowed by the Constitution and protecting them against unlawful imprisonment (*habeas corpus*; Anderson 2004, Martinez 2004).

Finally, apprehending individuals outside the U.S. proves an incredible difficulty. In cases in which a suspect is residing overseas the U.S. must work through extradition requests and procedures, or must use force to capture the individual directly. Unfortunately, not all countries have formal extradition treaties with the U.S., and diplomatic efforts to convince governments to extradite terrorist suspects are not always successful. Law enforcement agencies legally operating within the boundaries of these nations are often at the behest of local government and law enforcement demands (Chesney and Goldsmith 2008).

Similarly, military actions are subject to restrictions and have returned mixed results. In addition, use of force in response to terrorism comes with several conceptual externalities. First,

retaliation for its own sake is not an acceptable justification according to domestic or international law. Military force must be in response to an existing or imminent attack, should be proportional in measure, and should not “inflict unnecessary suffering on the terrorist,” but instead should seek to “contain the hostile situation (Erickson 1989).” The UN Charter affords two exceptions to the prohibition of the use of force in international relations: (1) when it involves the restoration of peace and security, and (2) when the right the self-defense is invoked (Article 51). When the Security Council condemned the September 11 attacks and expressed its commitment to combat future terrorism, it also reaffirmed the right to individual and collective self-defense, the only condition under which it explicitly authorized use of force to combat terrorism. One caveat is the case of active state sponsored terrorism in which the Law of Armed Conflict (LOAC) comes into play, providing for the escalation of conflict and use of force, still in the name of self-defense, and requiring states act in accordance with the Geneva Convention. Second, there is the question of the effectiveness of military force in combatting terrorism. Many policy makers and scholars have asked whether or not military strikes succeed in preventing or deterring future terrorist attacks (Gross 2005, Banks et al, 2008, Feridun and Shabaz 2010).

Third, military options almost always have unintended consequences, whether it be causing damage to property and equipment or harming civilians and inflict civilian casualties, not to mention loss of life of the soldiers in combat. An argument may be made that advancements in technology and global infrastructure have made military operations more precise in identifying targets and executing counter measures, but the question remains as to whether or not the externalities are worth the tradeoff of military engagement, especially if it is still unclear whether or not military measures are effective in combatting terrorism.

Finally, research has suggested that the use of military force can, itself, incite terrorism. Both qualitative narratives and quantitative research has posited that aggressive foreign policy, including heightening of military operations abroad, may be a catalyst for future terrorism activity (Banks et al., 2008, Savun and Phillips 2009, Choi and Piazza 2016).

Additionally, there are not only conceptual problems with the military model of counterterrorism, but are also many challenges when putting the model to practice. First, there must be clear standards of what degree of association with terrorism warrants a military response, including overt uses of force, tribunals, and detentions. In the *Rumsfeld v. Hamdi* decision, the Supreme Court upheld the legality of military detention of terrorist suspects without indictment or trial until the “cessation of hostilities”, citing that the principle of indefinite detention in this case was a “fundamental and accepted... incident to war” which held the purpose of keeping these individuals out of future, yet related, hostilities and terrorist events (542 U.S. 507; Chesney and Goldsmith 2008).³¹ While this verdict has raised the eyebrows of certain human and civil rights organizations, the Supreme Court determined indefinite detention without trial, in the context of ongoing hostilities, to be within the confines of the U.S. Constitution and that it is not in legal violation of the rights and liberties of the detained individual. This verdict online outlines the legality of detention after the fact; it does not set precedent for the conditions under which an individual may be detained or pursued via military means.

Second, the nature of new terrorist groups no longer typifies traditional understandings of terror groups within the military model, subverting “the considerations that ordinarily justify the minimal procedures afforded” by the detention aspects of the model itself (Chesney and Goldsmith 2008). Where terrorists were once viewed as substate civilian actors, new terrorists are understood, especially in the U.S., as their own category of combatant; unlawful enemy

³¹ Citations taken directly from *Hamdi v. Rumsfeld* verdict, and reported in Chesney and Goldsmith (2008).

combatant. This complex understanding of a new class of combatant soldiers who do not wear uniforms, do not openly bear arms, do not organize as traditional military units, and often hide among the civilian population makes it extraordinarily difficult to apply even the most rudimentary strategies of the military model.

Third, the fact that the military model does not clearly define criteria in terms of associational status nor does it incorporate a clear conceptualization of the new terrorism leads to two unfortunate possibilities: erroneous detentions and lack of negotiating prospects. While the military relies on intelligence to sniff out terrorist operatives living among the population, all individuals apprehended, operative or innocent civilian, have the incentive to disavow association with the terrorist group. In effect, this increases the risk of persecuting and detaining innocents, as there is little to differentiate them from the actual terrorists, informants often supply false information, and the tactics we might use during interrogation might even causes an innocent person to confess to a nonexistent association status (Crelinsten 2002, Darmer 2003, Arrigo 2004). Even more so, as militaries move away from basic operations into the more extreme measures, such as targeted killings and air strikes, they run the risk of civilian collateral damage (Wilkinson 2001, Silke 2003). If there is little incentive for terrorists to identify themselves, especially those associated with large, high resolve networks such as al-Qaeda or al-Shabab, there is even smaller incentive to negotiate on the larger scale of the hostilities (Crelinsten 2009).

Conclusions

The U.S. has a long and storied history with terrorism, specifically transnational terrorism. While terrorist attacks have evolved to become more intense and high yield, strategies to combat terrorism have remained relatively constant. Despite academic claims which suggest

that a paradigmatic shift from one counterterrorism model to another occurred with 9/11, history of counterterrorism practice shows a fairly consistent strategy of mixing or at least alternating criminal justice and military responses over time. It also suggests that public support for these strategies is important in their deployment and continuation.

Overall, neither approach, criminal nor military, has been singularly effective, signaling an appropriate counterterrorism strategy should include multiple strategies and tactics from both approaches. Due to the violent nature of terrorism it is difficult to draw boundaries between any of the pillars of counterterrorism, let alone between the judiciary and retaliatory processes (Crelinsten 1998). Because both are sometimes employed simultaneously, it is also difficult to measure the effectiveness of each on its own. It also seems that there is a discrepancy between the theory and practice of how and when these models are employed, with theory suggesting the primary employment of criminal-legal tactics, using force only as a last resort, but historical practice demonstrating use of force as a primary tactic in response to transnational terror. A closer investigation of empirical evidence is needed to know how and when the government will employ one model over or in conjunction with the other, and how these strategies affect relevant political processes.

Chapter 3: Theorizing the Counterterrorism Models

The previous chapters laid out two conceptual models of counterterrorism: criminal justice and military, and the history of their practice in the United States. While the International Relations and Law literature has outlined a general understanding of what these models are, they lack a thorough explanation of what they do in terms of identifying relevant actors, actions, and guidelines in counterterrorism strategy and what results and implications can be expected from them. In order to use these models for empirical investigation they must be further theorized with their propositions and assumption explicitly laid out.

The Theory Building Process

In order to move onto to the theories of the models themselves, there must be a basic understanding of the theory building process, including basic knowledge what a theory is, what it does, its component parts, and how it can be used. A theory is a logically interrelated set of propositions about “reality”. It is a “statement of the suspected relationships between and among” phenomena (Gelso 2006; Schutt 2015). Propositions about “reality” need not be based in experience or empirical observation as this is the purpose of hypothesis testing. Rather theories and the propositions they assert help to organize the subject matter of phenomena, make sense of unobservable relationship of entities, connect and determine causes by which sense is made of observable entities, and explore why these associations among entities obtain (Waltz 2010).

Theories are important because they help us to simplify reality in order to classify entities, processes, and relationships and to understand how and why they occur. Theories guide us in our research providing conceptual and operational definitions, identifying processes, setting expectations among entities, and guiding our methodological choices. Theory is meant to be

parsimonious yet thorough and it should be falsifiable. Falsifiability, first explained by Karl Popper, means that a theory can be negated or disproven; an important quality for the pursuit of scientific knowledge.

Theories are comprised of definitions, operational definitions, and functional relationships. Definitions introduce terms that refer to basic elements within the theory, whereas operational definitions relate theoretical statements to a set of possible observations. Functional relationships lay out the basic relationships among concepts within the theory. Theoretical statements about functional relationships may be classified as axioms and assumptions. Axioms and assumptions allow for the derivation of hypotheses about causality among these functional relationships. By nature, functional relationships “embody simplification,” meaning in order to arrive at them one must isolate bodies and entities both individually and together in abstraction of observables and experiences of reality in order to aggregate and idealize the relationship among those entities representative of a particular phenomenon (Waltz 2010). Axioms are the declarations in a theory about which we feel certain. They require no expansive explanation or further evidentiary proof; we accept them to be intrinsically true. Assumptions are suppositions that are accepted, for the purposes of the theory, without questioning or proof. The definitions of axiom and assumption may sound similar, but in fact, there is a crucial difference. Axioms are self-evident truths that require no proof, whereas assumptions are something we must accept to be true, regardless of proof, in order to move forward with the theory.

Hypotheses, a form of proposition, are derived from assumptions. It is a statement about what a researcher expects to find that does not yet have empirical support. These statements may be about the nature of the relationship among singular entities, operationalized as variables, multiple entities, or can be empirical generalizations about an observed relationship. Hypotheses

are useful because they allow for theories to be tested using the scientific method. Hypothesis testing in social science can be done quantitatively or qualitatively, but must be done with rigor and replicability. While it may be suggested that hypothesis testing is the ultimate goal of theory building, it is neither necessary nor sufficient in order for a theory to be considered complete. Hypothesis testing is fundamental to the social sciences because it affords empirical evidence of the associations among social entities, allowing for the systematic and scientific analysis social phenomena.

Criminal Justice Model

The process of theory building requires the explicit statement of both the self-evident truths, or axioms, and the primary assumptions derived from the content of the counterterrorism models. Recall, the criminal justice model is foregrounded in the thought that the criminal justice system is used to combat and prevent terrorism. Considering the full conceptualization of the model, there are four axioms, which are assumed to be true independent of any contingencies in other moving parts in the model.

Axiom 1. In the criminal justice model, terrorism is a crime. In this model, terrorism is perceived to occur within the context of existing statutes of criminal activity. This approach requires that the label of “terrorism” be attached to a specific criminal conduct violation as defined by US Code, the U.S. Constitution, and sometimes international law. As such, it necessitates the provision of certain rights and liberties to the defendants to ensure the integrity of democratic principles, namely rule of law, are upheld.

Axiom 2. The criminal justice model employs rule of law to detain, prosecute, and punish terrorist suspects. The second axiom is almost subsumed by the first in that since terrorism is viewed as a crime, then responses to terrorism must be constrained by the boundaries

of the criminal legal system which are a representation of the democratic commitment to rule of law. This commitment to rule of law is crucial to the criminal justice model, since it defines the limits of state response strategy and guarantees protection of individual rights and liberties throughout the detention, prosecution, and sentencing processes.

Axiom 3. In the criminal justice model, the state exercises restraint with regard to its monopoly on violence. Because the criminal justice model relies mainly on the capabilities of law enforcement, policy makers, and judicial officials to combat and prevent terrorism, the use of violence against terrorist suspects is both disgraced and disparaged (Lee 2007). Instead of responding to terrorism with displays of force, the criminal justice model purports to prevent future terrorism with the threat of prosecution and imprisonment (LaFree and Hendrickson 2007). Early qualitative research suggests that criminal-legal responses to terrorism are the best long-term strategy to combatting future terrorism, implying that violent, military responses may only be successful in the short term (Crenshaw 1983). These findings support the belief in the effectiveness of criminal punishments, which curtail the freedoms and liberties of the perpetrators, as a disincentive to commit terrorist acts.

Axiom 4. The criminal justice model is concerned with the preservation of democracy and civil liberties. The necessary conclusion to the first three axioms is that democratic principles matter. The criminal justice model, in its preoccupation with the rule of law, the rights of the accused, and restraint on violence, seeks to preserve the core of democratic values which are viewed as a “fundamental premise in the fight against terror (Pedahzur and Ranstorp 2001).” In this model, the preservation of liberal principles is as important, if not more so, than the emphasis placed on the actual restraint of terror.

These axioms of the criminal justice model should be given as evidently true. It is from these axioms that assumptions, or things we must accept to be true, can be derived. These assumptions must be accepted as a common sense type of truth in order for the theory to have utility, especially with regard to hypothesis testing (Coppedge 2002).

Assumption 1. The criminal justice model relies on domestic and international legal systems to regulate the detention, prosecution, and sentencing of terror suspects. In a criminal justice approach to terrorism, decision-makers rely on the extensive guidelines, regulations, laws and institutions that comprise the existing criminal-legal system. That said, the ambiguity of the law generates a system of responses to terrorism that test the boundaries of the relatively elastic criminal justice system (Cassese 2001, Byers 2002, Goodman and Jinks 2004). As detailed in Chapter 2, in the context of the United States, criminal-legal approaches to terrorism must abide by laws set forth in the U.S. Constitution and U.S. Code domestically, and are also subject to public international law (*jus ad bellum* and *jus ad bello*) such as the Geneva Conventions (Ratner 2002, Taft 2003, Sloane 2008). This approach to counterterrorism ensures that judiciary processes oversee the detention, prosecution, and sentencing of terror suspects and adjudicates the establishment of any special courts or procedures for trying terror suspects.

Assumption 2. Since both domestic and international criminal legal systems may oversee the detention and prosecution of terrorist suspects, the criminal justice model must be applicable to both domestic and transnational terrorism. I have previously asserted the U.S. conviction to uphold both U.S. Code as well as public international law. As far as international law is concerned, the United States prides itself on “moral leadership in the international community” and must adhere to international human rights law and provide all criminal suspects the judicial process that is “due under both domestic and international law (Bean 2007),” implying that

domestic and international laws overlap in some ways. While the tendency in the academic field is to distinguish between domestic and international terrorism, domestic legal code has often left the type of terrorism undefined or has explicitly addressed provisions dealing with the prosecution of foreign terrorists or terrorist acts that occur abroad. For example, the Alien and Sedition Acts in 1798 were meant to deal exclusively with the threat that foreign nationals posed to American security, while section 2332b of the AEDPA is entitled “Acts of Terrorism Transcending National Boundaries” and details the definition of and penalties for committing transnational terrorism against the U.S. However, many of the public laws enacted regarding terrorism do not define or specify how they would apply to instances of domestic versus transnational terrorism; in essence there is a “blurring” in the distinction between the two categories (Sandler 2003). Therefore, an assumption can be made that the criminal justice approach to counterterrorism can be used when faced with domestic or transnational terrorism.

Assumption 3. Concern with the preservation of democratic principles and human rights ensures that the criminal justice model is the first-line strategy in counterterrorism. It has already been established and definitively stated in axiom four that the criminal justice model seeks the protection of democracy and civil liberties as much as it seeks the restraint of actual terrorism. In fact, it has been argued that the criminal justice model views the promotion of democracy and rule of law as a necessary component of the strategy to combat terrorism and that the observation of rule of law reduces the likelihood of a state experiencing a terrorist event (Choi 2010). In fighting terrorism, the U.S. has maintained its commitment to democracy and its values including the observation and respect for human rights and the guarantee of basic civil liberties. If the primary counterterrorism strategy must consider what is best for the maintenance of these values, then this strategy must include a criminal-legal approach to terrorism which guarantees that these

rights and liberties are upheld. Namely, if we assume these democratic principles to be the most important component to combating terrorism (see Choi 2010, Chesney and Goldsmith 2008), then the dominant strategy used in response to terrorism must include this component by definition. Therefore, the assumption can be made that if the protection of civil liberties and rule of law, among other things, is crucial to the deterrence of terrorism, as crucial as the deterrence of terrorism itself, then the first-line strategy in deterring terrorism must include a criminal-legal response in which the rule of law is practiced and civil liberties and human rights are observed.

Assumption 4. The criminal justice model was more effective at deterring terrorism and employed primarily before the attacks of September 11. Criminological studies suggest that convictions and pre-crime (plotted but yet to be realized) counterterrorism measures including criminal investigations and prosecution have had a preventive effect on future terrorist activity (McCulloch and Pickering 2009). Prior to 9/11, it seemed, that with the introduction of the 1984 Combat International Terrorism Act (PL 98-533) and the 1986 Omnibus Diplomatic Security and Antiterrorism Act (PL 99-399), among other legislation, that the criminal justice system would prove a major part of U.S. counterterrorism strategy.

After the 1993 bombing of the World Trade Center, the U.S. was on heightened alert and was tipped off to a terrorist plot that was said to be a “war of urban terrorism.”³² The plot included the detonation of bombs across five New York City landmarks: the United Nations building, the Lincoln and Holland Tunnels, the George Washington Bridge, and the Federal Building in Manhattan. Federal and local officials devoted extraordinary law enforcement efforts to the investigation and apprehension of the conspirators of the attack. In 1996, after a

³² Spoken by terrorist suspect Sheik Omar Abdel Rahman, quoted in the New York Times, 1996, access: <http://www.nytimes.com/1996/01/18/nyregion/sheik-sentenced-to-life-in-prison-in-bombing-plot.html>

lengthy FBI investigation and an eight month trial, a Federal court sentenced Sheik Omar Abdel Rahman to life in prison and imposed no less than 25 years each for nine of his followers.³³

This serves as one example among many of the use of the criminal justice system to combat terrorism, in both preventive and punitive ways. The World Trade Center bombing trial was the largest ever in an American courtroom including over 200 witnesses, over 1,000 exhibits, and five months of testimony, resulting in seven convictions (Crona and Richardson 1996, Norman 2013). Despite the relative successes in terms of convictions with these two cases, there were many skeptics of the effectiveness of investigatory and prosecutorial measures in combatting actual terrorism, especially as terrorism became more political and violent in late 90s. Many worried that the “due process” model arbitrarily doled out punishment for unspeakable acts and was too often impeded upon by the notion of reasonable doubt which required revealing sources and support networks and methods of planning and execution to standards of which were “much greater than that of an ordinary criminal trial (McCullough and Pickerson 2009).” Moving into the 2000s, the U.S. had already grown tiresome of the burden of due process and commitment to international human rights law that was seemingly inhibiting the state’s ability to effectively combat terrorism.

Military Model

Conventional wisdom suggests that out of the fatigue with the liberal commitments of the criminal justice model, spawned a shift in focus in counterterrorism strategy toward the military model. That the military model treats terrorism as an act of war suggests several contrary axioms to that of the criminal justice model.

Axiom 1. In the military model, terrorism is an act of war. Where the criminal justice model views terrorism as a crime subject to the laws and regulations of the criminal legal system,

³³ The trial ended October 1 1995, though sentencing was not delivered until January 17, 1996.

the military model views terrorism as an act of war subject to the laws of war and rules of engagement for armed conflict. From this viewpoint, it is the obligation of the military to protect the nation's security using displays of maximal force including, but not limited to, retaliatory strikes, troop deployment, and campaigns of retribution just as would be elicited in times of conventional war (Chalk 1998). When terrorism is viewed as an act of war, it not only necessitates a military response, but also requires the labeling of suspected terrorists as enemy combatants whose fate rests in the confines of combatant treatment as defined in the laws of war.

Axiom 2. The military model relies on military rules of engagement to preempt, prevent, and retaliate against terrorism. Crelinsten (2002) suggests that if the security of the entire nation is threatened, rather than a small portion of subset of the population, much like in times of war, the state is more likely resort to the rules of war in order to protect its citizens. In this model, the state forgoes, or at least relaxes, its commitment to due process and follows procedures outlined in the military rules of engagement in order preempt, prevent, detain, and punish suspected terrorists. The state goes beyond traditional rule of law and defines its fight against terrorism in terms of combatants, maximal force, and war subjecting terrorists to the laws of war rather than the guarantee of due process and other civil liberties.

Axiom 3. State has monopoly and discretion on the use of violence. If the criminal justice model seeks to restrain state use of violence by relying on the criminal legal system to provide justice, the military model, its conceptual opposite, must seek to maximize state use of force in so far as it effectively accomplishes its goal of combatting and preventing terrorism. In the past, the state has been defined by its "claims to the monopoly of legitimate use of physical force within a given territory," a definition which is further supported by Article 2 Section 7 of the UN Charter (Claridge 1996). States, by definition, reserve the power to determine, in matters

of domestic affairs, whether or not to respond to acts of aggression with violence. The military model of counterterrorism assumes that this right extends to the combat and prevention of terrorist events.

From these axioms several assumptions may be derived about the relationship of the military model of counterterrorism to certain political processes and to terrorism, broadly speaking.

Assumption 1a. In states where the military may be deployed domestically, the military model is a suitable response for both domestic and transnational terrorism.

Assumption 1b. In states where the military cannot be deployed domestically, the military model is not applicable to domestic terrorism but is a suitable response for transnational terrorism.

These assumptions rely on the legally defined parameters of military deployment at the domestic level. If a state may deploy its military internally, for example Israel or South Africa, then we might assume the military model may be used for counterterrorism measures against domestic terrorism. However, if a state, such as the United States, is prohibited from deploying its military domestically except under extraordinary and unprecedented circumstance, it does not make sense to conclude that the military model will be used to combat domestic terrorism, but it does not preclude such a state from using the military model to combat transnational terrorism.

Assumption 2. Use of the military model implies a direct effect on actual military spending. The military model requires the use of force by the military in response to terrorist events, planned or executed, which necessarily suggests an increase in actual military activity. If military activity is increasing and emphasis is placed on counterterrorism measures that involve military efforts, military spending must also increase in order to finance the implementation of a

military response to terrorism. Defense economics literature suggests the best evidence we have of increased military activity is real defense spending, which is particularly likely to respond to instances of transnational threat, such as terrorism (Gupta et al., 2004, Sandler and Hartley 2007).

Assumption 3. Public opinion affects the decision to use and to continue to use the military model. This is an assumption is derived from empirical research rather than a given axiom. Empirical public policy research has demonstrated a link between public opinion and military spending; if the public believes the military overactive, or spending too much, decision-makers respond by decreasing military activity and actual defense dollars spent. Public opinion in the area of defense spending has exhibited a long history of fluctuation based on changing political environments, and especially, on the occurrence of dramatic political events such as militarized conflict, war, and terrorism (Converse 1987, Hartley and Russett 1992, Ladd 2007). Public policy literature makes clear that a “high proportion of variance of the annual rate of change of U.S. defense outlays” can be explained by public opinion (Higgs and Kilduff 1993). To this effect, previous research has demonstrated the role of public opinion in changes in defense spending following the Vietnam War, the Cold War, the Soviet invasion of Afghanistan, the attacks of September 11, and the War in Iraq to name a few, showing that a preference for decline or increase in defense spending led to actual decreases or increases in defense spending respectively (Wittkopf 1990, Bartels 1994, Hartley and Russett 1992, Birkland 2006, Voeten and Brewer 2006). Therefore, we should expect that dramatic events such as terrorist attacks play a role in shifting public preferences on defense spending and that the signals sent by the public may result in changes to actual levels of defense spending (Paige, Shapiro, and Dempsey 1987, Wlezien 1995).

The rationale behind the claim that trends in defense spending follow changes in public opinion are derived from the theoretical and statistical claims that policy outputs internalize feedback on public inputs and adjust accordingly (Pierson 1993). This claim is particularly relevant for counterterrorism models because policy preferences are more likely to change in response to dramatic political events, such as terrorist attacks, and the resulting signals may be strong enough to pressure change in the existing policy climate (Page and Shapiro 1983, Bartels 1992, Birkland 2006).

Assumption 4. The military model was rarely used before September 11, 2001, and has since become the more dominant response strategy. Prior to September 11, the military detention framework remained under great scrutiny from policy makers, the American public, and the international community. Many believed that the standards of international human rights law should apply during armed conflict, let alone, in the apprehension of ‘non-combatant’ individuals suspected of committing crimes associated with terrorism (Chesney and Goldsmith 2008). In particular, decision-makers and critics referenced the Additional Protocols (AP) I and II of the Geneva Conventions which restricts indiscriminate violence against and guarantees the humane treatment and legal protection of all persons who take part in hostilities but are exempt from POW status as defined in Article 4 of the Third Geneva Convention.³⁴³⁵ Though the U.S. did not ratify AP I and II, human rights considerations associated with these amendments severely constrained the use of force and application of the laws of war in response to terrorism during the pre-9/11 period.

³⁴ These individuals are generally exempt from POW status because they intentionally do not distinguish themselves from the civilian population, and purposefully refrain from activities, apart from coordinated attacks, that would irrefutably result in their classification as EPW (Chesney and Goldsmith 2008).

³⁵ The Geneva Conventions can be read in full at <https://www.icrc.org/en/war-and-law/treaties-customary-law/geneva-conventions> .

However, by the end of the 90s, decision-makers and the general public began to doubt the effectiveness of criminal justice measures in anti-terrorism efforts. Many worried that the punishments did match the crime and that suspected terrorists were “being punished about as severely as an ordinary robber or a drug pusher up for his “third strike” (Crona and Richardson 1996).” After the attacks on September 11, the U.S. declared a “Global War on Terror,” denoting the abstract “terrorism” as the prime enemy, whose associates and conspirators must be “eliminated” and “destroyed.”³⁶ The rhetoric switched from terrorism as a criminal act to terrorism as an act of war, while government practice moved from trying individuals for crimes associated with terrorism, to all out warfare against the named enemy. From this verbal declaration of war against terrorism, the Bush Administration also asserted its right to armed self-defense, to detain any “unlawful combatant” suspected of terrorism or conspiracy, and the renouncement of any applicability of the laws of war outlined in the Geneva Conventions (Paust 2003).³⁷ Collectively, the Bush and Obama administrations executed more military deployments, covert operations, and drone strikes in the name of combatting terrorism than had been reported in the last two decades combined. While the Obama administration, shifted rhetoric “reconstructing the war on terror,” speaking to the restoration of due process and other constitutional guarantees, his conduct suggested continued faith in the military model with additional troop deployments, 506 reported drone strikes, and revealed covert operations (McCracken 2011, Zenko 2016).

³⁶ Mentioned during the September 20, 2001 address to the nation. Full transcript is available through the Washington Post: http://www.washingtonpost.com/wp-srv/nation/specials/attacked/transcripts/bushaddress_092001.html

³⁷ The Administration later announced in 2002 that Geneva Conventions would apply to war against the Taliban, but maintained that non-governmental actors and even individual members of the Taliban associated with terrorism would be denied prisoner of war status and the legal treatment guaranteed by that title.

Presentation of Hypotheses

The following preliminary hypotheses focus mainly on the military model of counterterrorism, which is the model that is tested quantitatively. However, the assumption of the both the criminal justice and military models presume that the United States uses the criminal justice model as its primary response to terrorism. Essentially, both models rest on the underlying assumption that liberal democracies will use the criminal justice system, in order to preserve democratic principles, whenever possible. If that be the case, we can expect the relationship between terrorism and military spending to be insignificant.

H₁: There is no significant relationship between terrorism and military spending.

The assumptions of the military model offer several testable propositions. First, the military model suggests that after a terrorist attack occurs, a military response is offered, consequently increasing military spending for that fiscal year.

H₂: Terrorism has a direct positive effect on military spending. An increase in the supply of terrorism will lead to an increase in military spending.

Second, the military model posits a complex relationship between terrorism, public mood, and military response (evidenced by military spending). Terrorism spikes public mood, whether it be fear, anxiety, worry, anger, patriotism, or otherwise, causing an increased desire for military action. As a result, policy makers must consider and acquiesce to public demands for a military response, thereby increasing military spending.

H₃: Terrorism indirectly affects military spending through its impact on public mood.

A change in public preference for defense spending should reflect a change in both the preferred levels of spending and the actual spending decisions of policymakers. Namely, an increased demand for defense spending among the general public should produce upward

pressure on the defense budget, just as declining demand for military spending will produce a downward pressure on the defense budget, but will do so at lagged intervals (Bartels 1992, Higgs and Kilduff 1993, Wlezien 1995).

Hypothesis three is, in a way, linked to hypothesis two in that terrorism is thought to affect military activity both directly and indirectly, through its direct impact on public opinion. This complex relationship is depicted in figure 1.

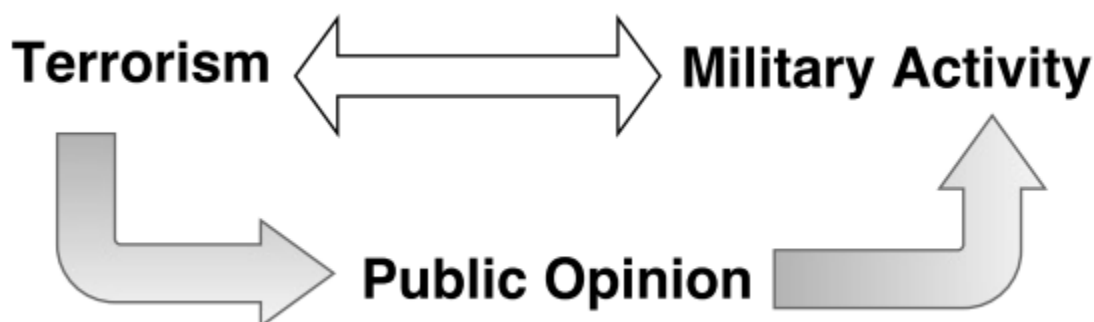


Figure 1. Interdependence between Terrorism, Military Activity and Public Opinion

In the military model, terrorism evokes a military response from the government. In addition, a terrorist event incites adverse sentiment in the public, who in turn signal to policy makers their desire for a forceful response. Consequently, military activity increases as an indirect result of terrorism. The indirect effects become a bit more complicated over time as the public wavers on its approval of actual military spending. In general, we would expect the public to desire more military activity immediately following a terrorist event, but over time, the public will eventually disapprove of the excess spending, resulting in a lagged decrease in actual spending. In short, I expect an initial spike in the relationship between public opinion and military spending with the effect decreasing over time.

H₄: Displays of military force deter terrorism, therefore an increase in military activity, measured in military spending, leads to a decrease in the future supply of terrorism.

This hypothesis rests on the assumption that the military model effectively combats terrorism.

Conclusions

This chapter lays out an operational theory of the criminal justice and military models. By building a theory from the conceptual models laid out in the existing literature, I was able to derive several assumptions which led to several hypotheses about the relationship between terrorism and the military. The major contribution of these hypotheses is the presumption of direct and indirect effects of terrorism on the military model, measure through military spending. According to the military model of counterterrorism, a terrorist attack should trigger a military response, thereby increasing military spending, demonstrating the direct effects of terrorism on military activity. In addition, military spending is greatly influenced by public opinion and public opinion is influenced by dramatic events like terrorism, demonstrating that terrorism indirectly affects military activity through its direct effect on public opinion.

Chapter 4: Vector Autoregressive Analysis of the Military Model of Counterterrorism

Ideally the postulated hypotheses about the relationship between military spending and terrorism (direct and mediated by public mood) would be tested using standard OLS regression implying a linear relationship where the effects of terrorism and public mood on military expenditures are both significant, yet independent of one another as demonstrated in the equation below.

$$\widehat{miles}_i = \beta_0 + \widehat{terror}_i\beta_1 + \widehat{mood}_i\beta_2 + \epsilon_i$$

Because I hypothesize direct and indirect effects and potential for interdependence among variables, typical linear models, which impose strict assumptions for independence and exogeneity, cannot be used. Instead, the analytical tool employed must be able to flexibly model the complex interdependence proposed to exist among the variables within the system.

The Vector Autoregressive Model

Vector autoregression (VAR) is an econometric tool used to analyze multivariate time series in which the dynamic behavior of an individual component of a system is assumed to be a product of its own past behavior as well as of the current and past behaviors of other components within the system. It is predominantly used for financial and economic time series and forecast, but can also be used to perform structural and policy analysis (Zivot and Wang 2006). VAR has been introduced to mainstream terrorism studies through the works of Todd Sandler and Walter Enders (see Enders and Sandler 1993, 2000 and Enders, Sandler, and Gaubulloev 2011) and Zvi Eckstein and Daniel Tsiddon (2004).

The VAR model is a special derivative of the autodistributed lag model (ADL) and is a sophisticated variant of the standard time series. However, unlike the standard time series and ADL models, VAR lends itself to the analysis of complex interdependent and dynamic systems

by allowing for non-stationarity, or temporal and spatial evolution of multiple variables (Enders and Sandler 1993, Toda and Phillips 1994, Phillips 1995). It investigates structural hypotheses, based on *a priori* assumptions about the existence of dependence between variables, often not testable using conventional statistical methods. Recalling figure one from chapter 3, the *a priori* assumption of the military model is that terrorism impacts military activity both directly and indirectly through public opinion, but also that military activity impacts future supply of terrorism. Unlike linear, ADL, and standard time series models, VAR not only assumes the “interdependence and contingency” of one variable on the others, it also can test these assumptions for validity (Stepanova 2003; Enders and Sandler 1993, Zivot and Wang 2006).

The VAR model has several characteristics that make it well suited for this study. First, it allows us to avoid "incredible identification restrictions" that many similar econometric models employ, this allows for the data to speak for itself without any restrictions (Simms 1980, Granato and Krause 2000). Second, it allows us to account for the complex interdependence that exists within a dynamic system. Dependence among observations complicates research in IR studies; for this reason it is “critical to our methodological analyses” though “ignored by many previous researchers (King 2001).” In the case of studies in government response and other questions relevant to single country studies of national defense and defense economics, the independent variables of interest are highly interconnected. Third, VAR allows us to work with reduced structural form making it easier to identify and analyze the relationship between variables of interest rather than being forced to deal with the constraints of controlling for potential controls or other independent variables. Specifically, VAR lessens the restrictive assumptions necessary in other econometric models to provide accurate behavioral interpretation (Hamilton 1994).

VAR aids in the analysis of variables that are spatially and temporally dependent; where variables are a linear function of past observations as well as of the past observations of other variables in the model. Meaning, in a dynamic system, present and future observations are a function of or are dependent on observations in the past. Because of this dependence, VAR is necessarily a tool for multivariate time series, where each variable has its own time series equation and each time lag has its own place in the right hand side of these equations, meaning the lags are included in the model as predictors. To test for causal linkages, the following VAR model is expressed:

$$y_t = \phi_0 + \phi_1 y_{t-1} + \phi_2 y_{t-2} + \dots + \phi_p y_{t-p} + \epsilon_t$$

Take the matrix form three variable VAR equation below

$$\begin{bmatrix} y_{1t} \\ y_{2t} \\ y_{3t} \end{bmatrix} = \begin{bmatrix} \phi_{11}(L) & \phi_{12}(L) & \phi_{13}(L) \\ \phi_{21}(L) & \phi_{22}(L) & \phi_{23}(L) \\ \phi_{31}(L) & \phi_{32}(L) & \phi_{33}(L) \end{bmatrix} \begin{bmatrix} y_{1t-1} \\ y_{2t-1} \\ y_{3t-1} \end{bmatrix} + \begin{bmatrix} \epsilon_{1,t} \\ \epsilon_{2,t} \\ \epsilon_{3,t} \end{bmatrix}$$

where $y_t = [y_{1t} y_{2t} y_{3t}]'$ and $\phi_{ij}(L) = \phi_{ij1} + \phi_{ij2}L + \phi_{ij3}L^2 + \dots + \phi_{ijp}L^p$ is the conventional lag operator supplemented for the reduced form equation (Granato and Krause 2000).

Though the estimates of the vectors in a VAR stationary series are asymptotically unbiased, consistent, and efficient, variables are assumed to be interdependent, they are also likely to be highly collinear, resulting in large standard errors and small t-ratios (Hahn and Kuersteiner 2002, Shellman 2004). For this reason, we cannot rely on conventional hypothesis tests and interpretational tools. Instead, VAR has its own interpretational toolkit to aid in its analysis, including granger causality, impulse response function, and forecast error variance decomposition.

Granger causality is a type of hypothesis test used for determining whether one series is useful in forecasting another. It regresses each variable on lagged values of itself and of other

variables in the system and then uses F-tests, omitting blocks of lags, to determine the causal direction of relationships between variables (Hoover 2001). Take for example the following restricted equation in which previous value y_{t-1} predicts the current value y_t

$$y_t = \alpha + \beta_1 y_{t-1} + \epsilon_t$$

Now consider this unrestricted equation in which the past value of a second variable y_{2t-1} are also presumed to predict current values of y_t

$$y_t = \alpha + \beta_1 y_{t-1} + \phi_1 y_{2t-1} + \mu_t$$

The F-tests will test restricted models, in which the lags (L) are omitted one at time, against the full model, which includes all lags in the function. The F-test then compares the sum of squared residuals (RSS) of the full model (RSS_0) to that of the restricted model (RSS_1)

$$F_1 = \frac{(RSS_0 - RSS_1)/k}{RSS_1/(T-2k-1)} \sim F_{k, T-2k-1}$$

for,

$$RSS_1 = \sum_{t=1}^T \hat{\epsilon}_t^2$$

and,

$$RSS_0 = \sum_{t=1}^T \hat{\mu}_t^2$$

If the specified test statistic, in this case F_1 , is greater than the critical F value, given as

$$F^* = \frac{1}{T-2k-1}$$

then we can reject the null hypothesis that y_{2t} does not Granger-cause y_t . Substantively, this means that the addition of y_{2t} in the previous period significantly improves the models predictive capabilities, thus concluding that y_{2t} Granger-causes y_t . We can also use this test to verify that the reverse is true, that y_t does not Granger-cause y_{2t} . This is important because if both y_t and y_{2t} Granger-cause each other, then there is likely a third variable y_{3t} which may be influencing

the causality and needs to be controlled for. It is also important to remember that Granger causality does not test for contemporaneous effects, meaning it cannot identify instantaneous causality (causality that occurs within the same time period nor does it allow for identification of the direction of causality).

The impulse response function (IRF) describes the moving average representation of a stationary process and traces the dynamic effects of shock on variables endogenous to a system (Enders 2015). Consider the following

$$\begin{aligned}\epsilon_t &= y_t - \psi y_{t-1} \\ &= (1 - \psi L) \cdot y_t\end{aligned}$$

where,

$$Ly_t = y_{t-1}, L^2 y_t = y_{t-2}$$

then the following expresses a moving average representation of y_t .

$$\begin{aligned}y_t &= (1 - \psi L)^{-1} \epsilon_t \\ &= (1 + \psi L + \psi^2 L^2 + \dots) \epsilon_t \\ &= \sum_{p=0}^{\infty} \psi^p \epsilon_{t-p}\end{aligned}$$

The impulse response function is thusly expressed

$$\begin{aligned}y_t &= \sum_{p=0}^{\infty} \psi^p (\sigma \cdot \sigma^{-1}) \epsilon_{t-p} \\ &= \sum_{p=0}^{\infty} Imp(p) \cdot \left(\frac{\epsilon_{t-p}}{\sigma} \right)\end{aligned}$$

serving as a compliment to the Granger causality test in that it tells us the impulse relationship between two variables over time in a dynamic system. Namely, the IRF tells us how one variable reacts to the impulse, or shock, of another variable, a reaction which may be deemed as causal if all negative numbered samples have a value of zero (for example, the input at time $t-1$

does not affect the output at time $t-2$). Each response includes the effect of a specific shock on one of the variables in the system at impact t , then at $t+1$ all the way to $t+p$.

The forecast error variance decomposition (FEVD) also describes a moving average representation of a stationary process, but instead of tracing the shock, it forecasts errors and relationships among variables and explains the proportion of the movements of a variable due to shocks from itself and shocks from other variables. The FEVD uses regressions to forecast the effects of each variable on the other over a time horizon h . The forecast error variance at h is:

$$\begin{aligned} E_t y_t - E_{t-1} y_t &= \phi_{11}(h) \epsilon_{1t} + \phi_{12}(h) \epsilon_{2t} \\ E_t y_{1t} - E_{t-1} y_{1t} &= \phi_{21}(h) \epsilon_{1t} + \phi_{22}(h) \epsilon_{2t} \end{aligned}$$

where the expected value of y_t is denoted by $E(y_t)$ and the forecast error variances are simply the squares of the forecast errors:

$$\begin{aligned} \theta_1(h) &= C_{11}(h)^2 + C_{12}(h)^2 \\ \theta_2(h) &= C_{31}(h)^2 + C_{32}(h)^2 \end{aligned}$$

where $\theta_i(h)$ is the forecast error variance of variable i at horizon h . The error variance decomposition quantifies the proportion of variance for which each shock is responsible and is equal to the fraction of forecast error variance of each variable due to shock at each horizon (Sims 2016).

$$\varphi_{ij}(h) = \frac{\omega_{ij}(h)}{\theta_{ij}(h)} = \frac{\sum_{p=0}^h C_{ij}(p)^2}{\sum_{p=0}^h \sum_{j=1}^n C_{ij}(p)^2}$$

The variance decomposition then is equal to the forecast error variance of variable i due to shock j at time horizon h , denoted $\varphi_{ih}(h)$, divided by the total forecast error variance (Phillips 1998). With both stationary and non-stationary series, we expect the forecast error variance to grow

linearly with the time horizon, because there will be more uncertainty the further out we forecast, until it eventually begins to converge (Plasmans 2006).

Data and Measurement

The data used to measure terrorist events is drawn from the Global Terrorism Database (GTD) which contains records of numerous types of events and covers the years from 1970 to 2014. The database has documented well over 140,000 terror related events worldwide and is considered to be one of the most accurate sources for both domestic and transnational terror events available (Sheehan 2012, LaFree, Dugan, and Miller 2015). It is maintained by the National Consortium for the Study of Terrorism and Response to Terrorism (START) that is hosted at the University of Maryland in conjunction with the Department of Homeland Security. Most importantly the GTD database contains variables that account for the number of injuries, number of attacks, and number of fatalities associated with each event within each country. For this reason, GTD has proven itself invaluable in studies of terrorism and, more importantly to this study, has been used in several influential studies that focus on transnational terrorisms and its impact on economic factors (Sandler and Enders 2004, Enders, Saschida, and Sandler 2006, Enders, Sandler and Gaibullov 2011; Enders and Hoover 2012). It is important to note that loss of the 1993 data by the GTD. In order to recover the lost data, I coded all transnational attacks from the United States Department of State Global Report on Terrorism 1993, using the same coding scheme as the GTD. From this report I recorded the number of U.S. citizens wounded and killed in a transnational terrorist attack, and the total number of transnational attacks involving the U.S. in that year. I cross checked the totals with the FBI Report on Terrorism 1993.

Over the 45 year time period included in this data set, the United States experienced a total of 829 *transnational* terror events that targeted US citizens across the globe, which averages around eighteen events per year. Of course there were some years when less attacks occurred, as well as years where more than eighteen events occurred. The highest number of transnational attacks in a given year was 54.

	Mean	Std. Dev.	Min	Max	Total
Attacks	18.76	11.34	3	54	829
Wounded	205	620.71	10	4101	11288
Killed	123.89	448.79	5	3011	8930
Terror Index	3.92	1.08	2.54	7.28	
Milex (per cap)	1889.94	299.73	1359.71	2402.67	
Mood	48.11	19.00	6.46	78.20	

Table 1. Summary Statistics

Terror Index. Many studies consider only the frequency of attacks or the number of fatalities, but rarely both when performing research of the impact of terrorism. For this study, it is important to not only identify the number of attacks, but also to identify the varying intensities of those attacks as higher intensity attacks are likely to elicit a higher index of government response. That is not to say that low intensity attacks do not render an impact as in some cases the infliction of fear alone is enough to call the government to action, however the response to an event that has no injuries or no casualties is expected to be less severe than a more destructive attack. To capture the intensity of terrorism many approaches have been used; mainly the number of events, the number of injuries, and the number of casualties. It is from this idea that the measure of terror intensity is conceptualized. This measurement was first used by Eckstein and Tsiddon (2004) in their case study on the economic impact of terrorist attacks within Israel.

The terrorism index variable is the natural log of e , to counteract zeros in the data set, plus the equally weighted sum of the number of attacks (a), the number of injuries (i), and the number of casualties (k).

$$\ln\left(e + \left(\frac{a + i + k}{3}\right)\right)$$

This terror index “captures the flow of terror activity”, which has the benefit of incorporating intensity and frequency of terrorism into the measurement (Eckstein and Tsiddon 2004). The higher the index, the greater the intensity of the attack.

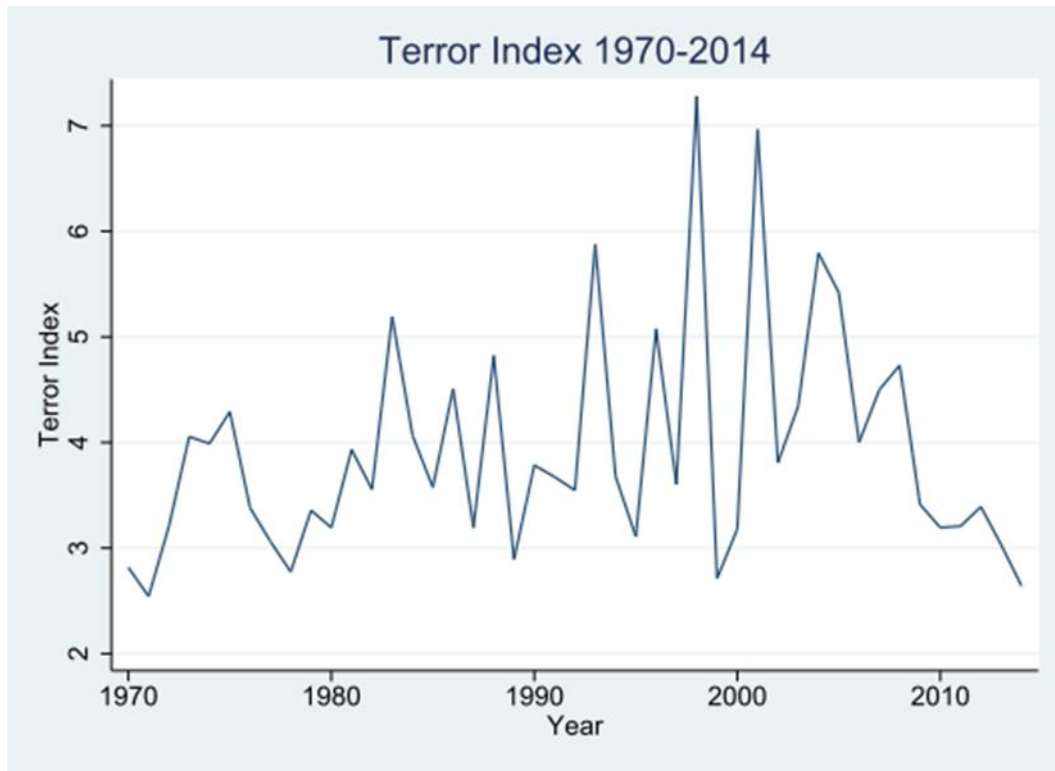


Figure 2. Terror Index Over Time

Military expenditures per capita (first difference). Expenditure data for the U.S. comes from the Stockholm International Peace Research Institute (SIPRI) military expenditures dataset spanning 1970-2014 and are the real dollars spent, per capita. The primary reason for using the SIPRI dataset as opposed to the U.S. operated Green Book data is that SIPRI more readily allows for expanding the empirical research to other nations, nevertheless the yearly observations are identical. While there is no consensus among scholars on the most effective way to capture the government's reaction in attempt to respond to and to prevent terrorist activity, I argue for the use of military expenditure as an indicator of government response (Murdoch and Sandler 1984, Sandler and Hartley 1995, Abu-Bader and Abu-Qarn 2003). While military expenditure is not the perfect indicator of response to terror alone, as portions of the defense and expenditure budgets go to assist other programs and areas of defense, it is the most theoretically logical indicator of government response considering the exponential increase in yearly expenditures following 9/11 (peaking in 2010 at over \$711 billion), and that each National Security Strategy and declassified National Military Strategy document has stressed the military priority of bolstering counterterrorism efforts and eradicating terrorists, their threats and their attacks.³⁸ In addition, the defense economics literature suggests that military expenditure is best way to measure military activity, productivity, and national strength and that the military's primary duty is to promote national security which terror acts seek to threaten (Hartley and Sandler 1995).

With regard to the budget request processes and resulting expenditure outcomes, the government and policymakers, after experiencing a transnational attack, are expected to respond in a manner that would ensure the public that they are being protected in order to reduce fear and to allow for maneuverability in the response to current attacks and prevention of future ones.

³⁸ While I was unable to acquire National Military Strategy doctrines before the 1990s, it is worthwhile to note that in the documents prior to 2004, the focus was on "transnational dangers," which groups counterdrug, counterterrorism, and transnational health initiatives under the same umbrella.

This allows for policies to be passed to prevent such occurrences from taking place, one such policy outcome is an increase in military spending to thwart terrorist activities. While it may be argued that the military budget does little to prevent attacks within the United States, the military can and does play a vital role in preventing terrorism before it occurs and that role has only grown larger in the post 9/11 environment. If the frequency of terrorist attacks increases, or the intensity of attacks becomes greater, this can lead to a “growing public pressure on the government to take further *military* measures to fight terrorism” (Feridun and Shahbaz 2009).

By focusing on the government response via policy change in the form of military expenditures, I am able to insert this research in between the terrorism and defense economics literature. I analyze the first differenced military expenditures per capita. Differencing is a calculus procedure which, in time series, examines the difference of successive values of y_t over successive values of x_t . While an argument may be made to use the logged per capita expenditures, I follow precedent of several studies which employ the first differenced per capita expenditures, as well as first differenced per capita GDP (See Cusack and Ward 1981, Brauer and Hartley 2013, Das et al., 2015). While Sims (1980) and Sims, Stock, and Watson (1990) recommend against first differencing arguing that the goal of the VAR analysis is to determine the interrelationship among variables, not to determine the parameter estimate, Patrick Brandt and John Williams (2006) argue that differenced-stationary series should be treated as such if we are to render our test results as asymptotically valid, and that short term dynamics and exogeneity analyses are the main focus. Brandt and Williams views are echoed by Dickey, Bell, and Miller (1986), Cochrane (1991), Breitung and Pesaran (2008), and have been applied in many studies involving expenditure and growth data including the following Thornton (1996),

Freeman et al., (1989), DeBoef and Keele (2008), Brauer and Hartley (2013). The raw expenditures and first differenced per capita expenditures over time can be seen in figure 3.

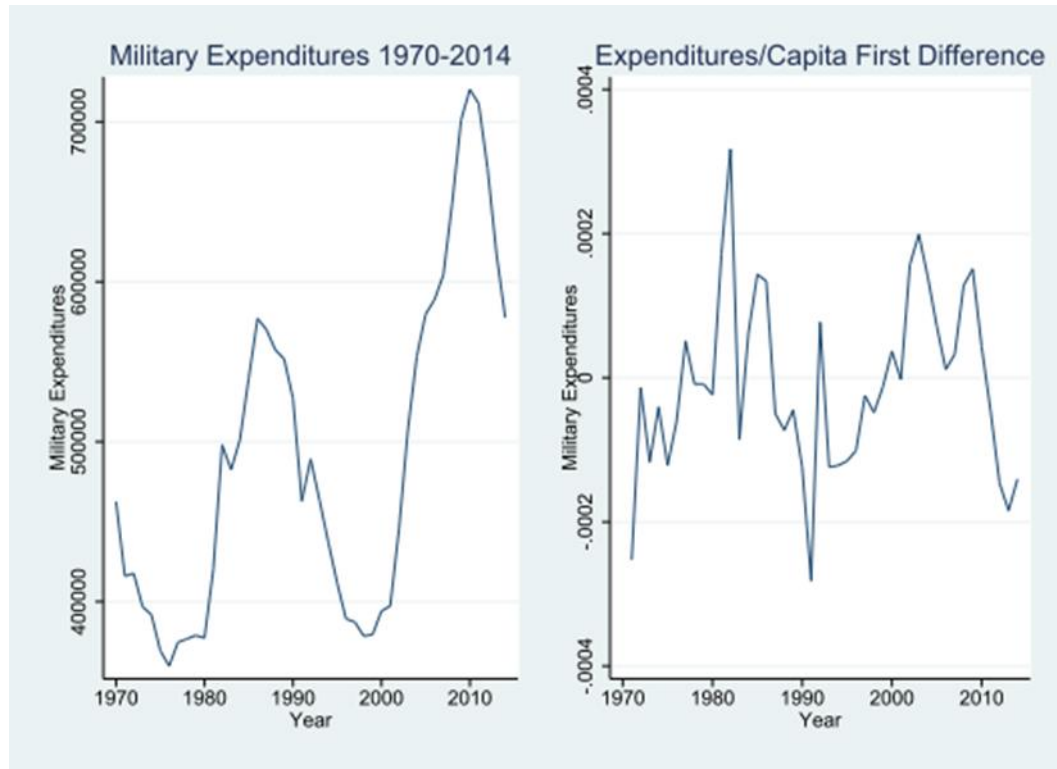


Figure 3. Trend in Raw Military Expenditures from 1970-2014 and in First Differenced Per Capita Expenditures

Public opinion. Previous political science research has shown public sentiment to be a good indicator of future levels of defense and military spending (Hartley and Russett 1992, Wlezien 1995, Burstein 2003). Whether or not the public feels the government spending too little, too much, or just enough on national defense and military readiness and operations has statistical impact on future defense budget requests and, consequentially, actual military spending (Knopf 1998). To capture public opinion on defense spending over time, I use the Policy Agendas

Project Public Moods dataset,³⁹ which covers all but four noncontiguous years of the time frame of this analysis, for which those four years the missing data was imputed.⁴⁰ Respondents of the survey were asked, “There is much discussion as to the amount of money the government in Washington should spend for national defense and military purposes. How do you feel about this: do you think we are spending too little, too much or about the right amount?” The aggregate mood data theoretically ranges from 1-100, where 1 represents all respondents believe the government is spending too little (should spend more), 100 represents all respondents believe the government is spending too much (should spend less), and a middling response signifies belief that the current spending is just about right. Actual annual measures of public mood in this study range from 6.4 to 78.2.

Interstate conflict. The existence of ongoing armed conflict may factor into past and current levels of military spending. Using the Correlates of War MID dataset, I included a Militarized Interstate Dispute variable as an exogenous predictor. This variable, coded annually, accounts for disputes that the U.S. was involved in that had more than 25 fatalities which are coded as 1, and any years with less than 25 fatalities or no involvement in militarized interstate disputes are coded as 0 (Wallensteen and Sollenberg 1998, Gleditsch et al., 2002).

Incumbent administration. Both theory and expenditure data suggest that the two major political parties have differing agendas with regard to defense spending and military activity. Political science research suggests that while both the executive and the legislative branches are in charge

³⁹ The data used here were originally collected by Frank R. Baumgartner and Bryan D. Jones, with the support of National Science Foundation grant numbers SBR 9320922 and 0111611, and are distributed through the Department of Government at the University of Texas at Austin. Neither NSF nor the original collectors of the data bear any responsibility for the analysis reported here.

⁴⁰ Since this study uses aggregate public opinion data it is appropriate to impute the missing data for the four years in which the Policy Agendas Project did not supply a measure for public sentiment on defense spending (Groves and Peytcheva 2008). I used sequential regression techniques to compute the multiple imputation design.

of final decision making for military spending, the president is in charge of proposing the initial budget from which all alterations stem and public opinion on military spending may be filtered through public support for the president (Nincic and Cusack 1979, Delucchi and Murphy 2008) To control for this factor, I included an exogenous predictor coded as 0 if the democratic party is in control of the executive office and as 1 if the republican party controls the executive office.

Operation Enduring Freedom. Research suggests that the attacks on September 11 may have changed the paradigm of government responses to terrorism away from criminal justice responses in favor of increased military activity. To examine the possible effects of 9/11 on military expenditures, I include an exogenous control variable coded as 0 for years 1970-2001 and 1 for 2002-2014.⁴¹

Analysis and Discussion

To choose an appropriate lag length, the VAR select function was used and the Akaike Information Criterion (AIC) and Schwarz criterion (SBIC) were considered and the results are shown in table 2. Both the AIC and SBIC results arrived at the same appropriate lag length of one year. The resulting lag suggestion makes substantive sense due to the delayed effects regarding budgetary decisions, appropriation, and implementation. In addition, Dickey Fuller test, displayed in table 3, did not indicate unit root presence; therefore all variables included across both models are analyzed as trend-stationary series.

⁴¹ Although the attacks occurred in 2001, the coding does not change to 1 until 2002 because it was not until 2002 that the budget reflected increased requests as a result of these attacks.

lag	LL	LR	df	p	AIC	SBIC
0	342.755				-15.560	-14.898
1	384.06	82.608	16	0.000	-16.765*	-15.441*
2	398.465	28.11*	16	0.025	-16.689	-14.703

Table 2. VAR Select: AIC and BIC Results

Augmented Dickey Fuller Test

	Test Stat	Critical Value	<i>p</i> – value
Per Capita Expenditures (first difference)	-4.210	-3.628	0.000
Per Capita GDP (first difference)	-4.064	-3.628	0.001
Terror Index	-6.649	-3.628	0.000
Public Mood (first difference)	-5.823	-3.628	0.000

*null hypothesis is that the variable contains a unit root

Table 3. Augmented Dickey Fuller Test

Initial granger causality tests suggest that current and past values of terrorism may forecast future values of military spending; the results are shown in table 4. However the granger test cannot say, with confidence, that current and past values of military expenditures are good predictors of future terrorism flows in the U.S. These results confirm Feridun and Shabaz's (2010) assertion that unidirectional causality signifies the inability of military use of force to combat terrorism on its own. It also alleviates suspicion of the role of a third variable in influencing the direct relationship between terrorism and expenditures. The results also confirm that public mood on defense spending is a good indicator of future values of military spending, but public mood may not be influenced by past terrorist incidences or military spending. However, the granger results cannot determine whether public opinion is instantaneously affected by terrorist events. Overall, the test results confirm that the flow of terrorism and public sentiment play a vital role in future values of military expenditures.

Equation	Excluded	χ^2	Prob $\leq \chi^2$
Expenditures	Mood	8.4669	0.015
	Terror	7.615	0.022
	ALL	14.124	0.007
Terror	Expenditures	5.149	0.076
	Mood	7.136	0.028
	ALL	12.757	0.013
Mood	Expenditures	1.015	0.602
	Terror	01.037	0.595
	ALL	1.743	0.783

Table 4. Granger Causality Results

The VAR model further supports the granger causality results, showing that on average from 1971-2014, military spending in response to transnational terror is statistically significant for the first temporal lag, as well as the second. This shows that an increase in terrorism activity and intensity does indeed influence military expenditures, and, more specifically, this influence persists for multiple years. While the first lag was expected to be influential due to budget cycles that may delay governmental responses, that the second lag is also significant suggests that the effects of terrorism may persist beyond the initial year in which the event took place. I expected the significance to persist due to the nature of government spending which is delayed by Congress, budget constraints, and audience costs among other things, and to the persistent nature of military spending in particular (Smith and Dunne 2010).

To aid in the analysis of the effect of transnational terrorism on military expenditures, an Impulse Response Function (IRF) is used. The IRF is useful to “study shock-induced” events like terrorism (Enders, Sandler, and Gailbulloev 2011). The solid line in Figure 3 represents the military spending impulse response and the gray shading represent 95 percent confidence intervals, which were generated through bootstrapping. We can interpret the results as follows:

when a one standard deviation shock of the terror index is introduced into the system the resulting effect is an increase in military expenditures. The IRF analysis also suggests when one standard deviation of the terrorism index is introduced, its effect on military spending becomes significant the year after and the general patterns of spending do not return to their ‘pre-shock’ levels until around six years later.

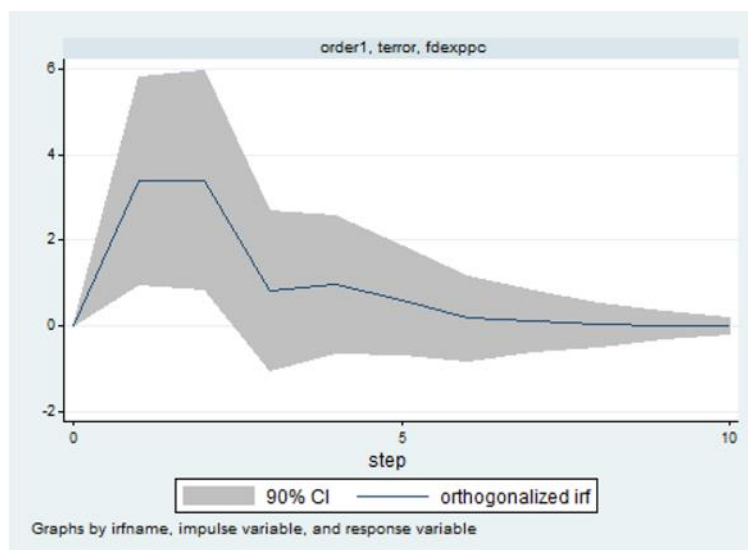


Figure 4. IRF results of Military Expenditures Shocked by Terrorism

Although I could have observed from the data a correlation between terrorist attacks and military expenditures, the results of this analysis demonstrate the effects of the shock of the terror index is not only increasing military expenditures, but also that it persists for several years. While these results signify the average relationship between terror and military spending across all events from 1971-2014, it still demonstrates the existence of a statistically significant and persistent effect of the flow of terror on military expenditures for over four years. The longevity of persistence is unexpected but is a good indicator that terrorist events have a much longer impact far beyond the initial attack.

Another useful feature of the VAR model is the ability to analyze forecast error variance decomposition of the variable of interest. It can be used to “determine the impact of one variables forecast error on the error in forecasting other variables. Thus we can measure the effects that variables have on each other over time (Freeman et al., 1989).” The forecast error variance decomposition confirms that the effect of terrorism plateaus in around year six with 18.6 per cent variance explained before beginning to converge. Substantively, this suggests that the introduction of terrorism can explain up to 18.6 per cent of the annual change in military expenditures over time.

Horizon	Forecast	Lower	Upper
0	0	0	0
1	0	0	0
2	0.1090	0.0004	0.2485
3	0.1827	0.0010	0.3644
4	0.1808	0.0013	0.3604
5	0.1850	0.0020	0.3681
6	0.1867	0.0021	0.3712
7	0.1868	0.0021	0.3716
8	0.1869	0.0021	0.3717
9	0.1869	0.0021	0.3717

Table 5. FEVD of Military Expenditures to Terrorism

Comparing the results of IRF when public opinion is shocked by terrorism to the results of the granger causality test, I correct in my prediction of contemporaneous causality. Recall the granger causality test were inconclusive for the effects of terrorism on public opinion, but the IRF results confirm that this is because the effects of terrorism on public opinion are instantaneous, which the granger tests cannot identify.

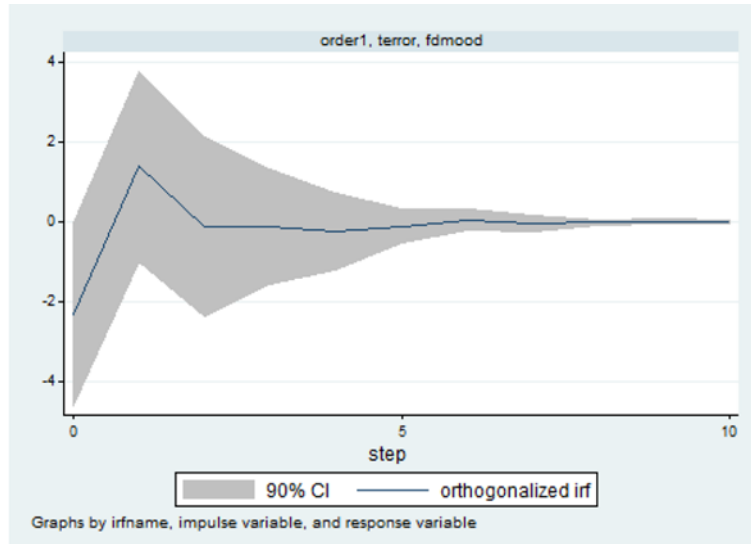


Figure 5. IRF Results of Mood Shocked by Terrorism

The FEVD confirms that the effects of terrorism converge at $t + 2$, explaining up to eight per cent variation in public opinion.

Horizon	Forecast	Lower	Upper
0	0	0	0
1	0.0621	-0.5321	0.1774
2	0.0806	-0.0526	0.2138
3	0.0777	-0.0506	0.2061
4	0.0775	-0.0509	0.2058
5	0.0779	-0.0501	0.2058
6	0.0780	-0.0499	0.2058
7	0.0780	-0.0499	0.2058
8	0.0780	-0.0499	0.2059
9	0.0780	-0.0499	0.2059

Table 6. FEVD of Public Opinion to Terrorism

The model also demonstrates the strong impact of public mood on military expenditures but only after the first year. The second year lag proved insignificant substantively signifying that only public opinion from the recent past has an impact on military spending in the future.

This is to be expected as both the general public and policy makers remember the distant past less clearly making it unlikely for Congress to use public opinion measures from the several years back to justify current spending or future spending requests (Carey 1995, Shiller 2002). The IRF and FEVD results, shown in figure 4 and table 6 respectively, show public mood explains up ten per cent variation in military expenditures over a ten year forecast.

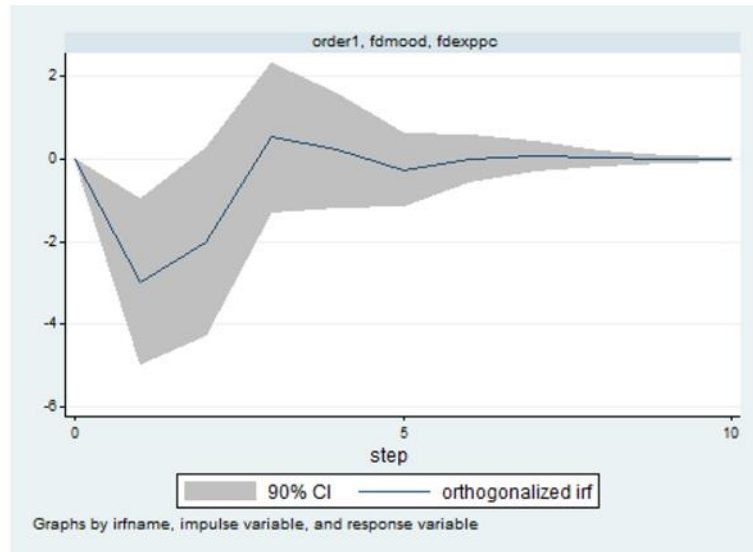


Figure 6. IRF Results of Military Expenditures Shocked by Public Opinion

Horizon	Forecast	Lower	Upper
0	0	0	0
1	0	0	0
2	0.0836	-0.0216	0.1889
3	0.1014	-0.0207	0.2236
4	0.0997	-0.0134	0.2127
5	0.0984	-0.0118	0.2087
6	0.0984	-0.0124	0.2093
7	0.0984	-0.0123	0.2091
8	0.0984	-0.0122	0.2090
9	0.0984	-0.0122	0.2090

Table 7. FEVD of Public Opinion to Military Expenditures

The final IRF and FEVD (table 8 and figure 7) tests hypothesis four; that an increase in military activity should lead to a decrease in future supplies of terrorism. The results do not support this claim, rather, they suggest the possibility that heightened military activity may *increase* terrorism across a shorter horizon. The IRF shows an increase in the levels of terrorism from t to $t + 1$ before the decline to pre-shock levels around $t + 2$. The FEVD shows military expenditures explaining up to eleven percent variation in terrorism flows, but since the confidence intervals contain zero, ideally more evidence is needed to make solid assertions about the relationship between the two.

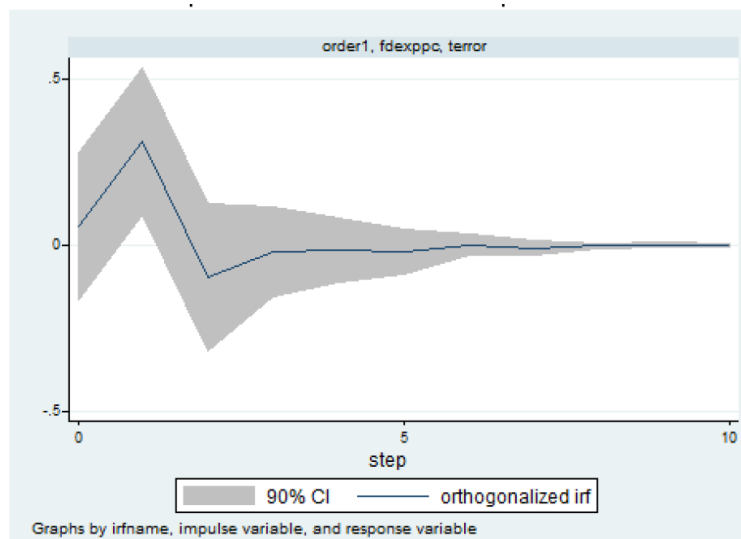


Figure 7. IRF Results of Terrorism Shocked by Military Expenditures

Horizon	Forecast	Lower	Upper
0	0	0	0
1	0.004	-0.0281	0.0362
2	0.1049	-0.0272	0.2369
3	0.1128	-0.0306	0.2561
4	0.1113	-0.0296	0.2523
5	0.1107	-0.0274	0.2489
6	0.1111	-0.0280	0.2505
7	0.1110	-0.0283	0.2504
8	0.1111	-0.0282	0.2505
9	0.1112	-0.0282	0.2505

Table 8. FEVD of Terrorism to Military Expenditures

The party exogenous controls were significant, while the control for MIDs and September 11 attacks were not. This suggests that both the party which holds executive office contributes more information regarding future levels of military spending than does existing armed conflict or the September 11 attacks in 2001. While September 11 was a truly devastating day U.S. history, 2001 comes second highest in level of terror index to 1998, which saw two embassy attacks wounding more than 4,000 people. Substantively, the structure of the data regarding terrorism's effect on military spending has remained consistent over time, which calls into question the validity of the literature's claim that the military was not really used in response to terrorism before 9/11. As the post- 9/11 observations in the control variable only account for about one quarter of the annual observations in our analysis, it does not have the type of leverage over the statistical results that one might assume given the amount of policy change as a result of these attacks. This means, that despite any conventional thoughts about the magnitude of change in defense spending after 9/11, it is not enough to sway the outcome of the entirety of the observations.

Overall, the results demonstrate both consistencies and inconsistencies with the hypotheses. First, hypothesis one, that there is not significant relationship between terrorism and military activity, is not confirmed by the results. In fact, the granger causality, VAR, IRF, and FEVD results all suggest that terrorism is a good indicator of future values of military spending. These results confirm hypothesis two, that terrorism has a direct effect on military spending. The granger causality confirms that terrorism granger causes military expenditures, the IRF shows that terrorism causes an increase in military expenditures, reaching a maximum in periods 2-3, and the FEVD shows terrorism explains 18 percent variation in military expenditures before convergence around year six. Hypothesis three tests two propositions: (1) terrorism causes an increase in public opinion, signaling the desire for higher defense spending, and (2) a decrease (meaning the government should spend more) in public opinion measures causes an increase in military expenditures. The results confirm both propositions and suggest that terrorism indirectly impacts military expenditures through public mood, but the effects are contemporaneous or have short horizons. The fourth hypothesis speaks to the effectiveness of the military model; if the military model works, then increases in military activity should lead to future decreases in terrorism. While more evidence is necessary to increase our confidence levels, the preliminary tests suggest that increases in military activity may actually increase, at least contemporaneously, the supply of terrorism.

Implications

The results of this research suggest that terrorism has both direct and indirect effects on military activity. The impact of terrorism on military spending is more than immediate. It is lasting, even though budget cycles may affect the temporal realm in which military expenditures can be affected. Although military expenditures may increase for other reasons, the results

indicate that terrorism positively affects military expenditures independent of other ongoing militarized conflicts and operations that the U.S. may be engaged in. Terrorism also directly impacts public opinion, calling for an immediate increase in military spending. However, because of the way budget cycles are structured, the increases in actual dollar spent, when affected by public opinion, do not occur right away, but instead occur a period or two into the forecast horizon precisely because actual dollars spent on military operations is directly related to proposed budgets of the preceding fiscal year.

The results also suggest that the existing literature may have over emphasized the importance of September 11 as a transition point between the criminal justice and military models of counterterrorism. Specifically, the pre-9/11 counterterrorism literature has incorrectly under-emphasized the role of the military model, and over emphasized the role of 9/11 in counterterrorism response strategy. The results suggest that 9/11 was not a significant event with regard to changes in military activity in response to terrorism. Instead, the results are consistent with the proposition that military activity in response to terrorism has remained relatively consistent since 1971 in its variation when shocked with a standard deviation of terrorism, suggesting that military action may have always been a dominant counterterrorism strategy in the U.S.

The assumption of interdependence between terrorism and military expenditures are consistent with the results. As discussed above, terrorism increases military expenditures, but the results also suggest the possibility that increase military expenditures might increase terrorism contemporaneously. This finding is consistent with Braithwaite and Li (2007) and Azam and Thelen (2010) who posit that increased military capability and expenditures and military interventionism statistically increase the supply of terrorism. Even though the FEVD

required additional evidence to make a more confident conjecture, these results imply that military action alone may not be enough to combat terrorism.

The quantitative analysis provided several insights into the military model and highlighted several inconsistencies between existing conceptual literature and empirical evidence. Certain aspects of counterterrorism strategy, such as under what conditions the models will be employed, currently lack the observational data for empirical investigation and need further exploration through qualitative analysis. In addition, lack of access to criminal justice data including organizational and bureaucratic policies and procedures, systematic coding of criminal prosecutions, and more, leave much to be explored qualitatively about the criminal justice model of counterterrorism. The next chapter further explores the two models of counterterrorism through qualitative investigation and lends a more nuanced depiction of the two models in action.

Chapter 5: Qualitative Analysis of the Counterterrorism Models

This section of the dissertation presents a qualitative study of U.S. counterterrorism models, which serves both as a compliment and a supplement to the quantitative research of the previous chapter. The research design for the qualitative analysis is informed by the theoretical frameworks of the criminal justice and military models of counterterrorism, which are laid out in chapter 3. The purpose of the qualitative research is to systematically investigate the conditions under which the models are employed, to what and to whom specific counterterrorism strategies will be applied, how strategies have shifted over time, if at all, and to further explore official explanations and justifications of counterterrorism policies and procedures.

Concepts and Definitions

In order to proceed with the presentation of the results of the qualitative research, I will provide operationalizations of several terms that are the primary concepts around which the qualitative research was performed. In the U.S., the concept of *terrorism* holds many definitions across the many actors and agencies responsible for its prevention. Recall from chapter 1, for the purposes of this research, a generic definition of terrorism is used that encompasses the major consensual dimensions of the phenomena as conceptualized by the major actors within the field of counterterrorism. Terrorism is defined as the premeditated use or threatened use of violence by an individual or group to obtain a political or ideological objective through intimidating or inciting fear in a larger audience beyond the immediate victims. This definition allows for non-human victims and state sponsored terrorism. This definition implies that a *terrorist* is an individual or group who wields or threatens to wield violence to intimidate or incite fear in a larger audience beyond that of the immediate victims in order to obtain a political or ideological objective.

Because many Western states do not include a crime of “terrorism” in their criminal codes, suspected terrorists are tried for *crimes associated with terrorism*. These include violent crimes such as murder, solicitation of murder, use of weapon of mass destruction, and malice and seditious acts of violence, but include crimes that are non-violent in and of themselves, but encourage violence within a greater plan, for example, inciting another person to commit an act of terrorism, defrauding banks and creditors, document fraud, conspiracy, terrorist fundraising and material support, belonging to a proscribed group, and criminal association to a terrorist undertaking. In the U.S. specifically, terrorist suspects have been tried for many of the aforementioned crimes and also possession of bombs, piracy, hijacking, and hostage taking, robbery, possession of illegal firearms, hiding evidence, assault, malicious destruction of property, transporting explosives, and conspiracy to kill, kidnap, maim, and injure persons or damage property to name a few.

After an attack, or upon learning of a plotted attack, the government may choose to respond using law enforcement or military frameworks for investigations, apprehensions, arrests, interrogations, detentions, trials, and punishments or sentencing. When apprehended, terrorist suspects may be held in criminal or military detention. *Criminal detention* is when a suspect is held in the custody of a law enforcement body or is lawfully imprisoned to a particular civilian area, usually prisons, police-cells, or other detention centers, where some of that individual’s personal liberties have been revoked. Criminal detention requires that the detaining organization identify specific infractions of criminal conduct and provide the defendants with certain rights and liberties, including due process (Chesney and Goldsmith 2008). In certain cases, individuals are held off grid or in “black sites,” known as proxy or invisible detentions; these cases are only considered criminal detention cases if the overseeing entities are entirely law enforcement

organizations, such as the local police forces, FBI, or CIA (Khalili 2013). Although the CIA has been known to perform paramilitary operations, International Relations and Criminology literature generally include the agency as part of a criminal justice response, unless the agency is working conjointly with U.S. military forces, as they are still expected to operate within the confines of the existing criminal justice system, ultimately bringing terrorism to prosecution in criminal court (Crelinsten 1989b, Dripps 2003, Bayley & Weisburd 2011). If the overseeing entities of the detention include military organizations, then the suspects are said to be held in *military detention*. In the U.S., these types of detainees are typically held at the Naval Station Guantanamo Bay, but may also be detained at other military bases both domestically and abroad. In addition, there have been some reports of U.S. military forces participating in detentions of suspected terrorists at black sites worldwide alongside CIA and FBI, among other law enforcement agencies (Khalili 2013, Pugliese 2013).

More recently, and especially since 2001, the U.S. has systematically defined terrorists as unlawful enemy combatants in order to justify and ensure they receive military detention and prosecution. The term *enemy combatant* references to the law of armed conflict and should be traditionally understood as any citizen of a state in which the U.S. is at war, who are members of the armed force of that enemy state, and who are guaranteed protections of the Fourth Geneva Convention. However, in the context of terrorism, “enemy combatants, in the present conflict, come from many nations, wear no uniforms, and use unconventional weapons...[they] are not defined by simple, readily apparent criteria such as citizenship of military uniform” and are not limited to citizens of foreign nations and should not be guaranteed prisoner of war status nor the protections of the Geneva Convention (Detention of Enemy Combatants Act (H.R. 1076, 109th Congress)).

In 2006, the Bush Administration signed the Military Commissions Act (Pub. Law 109-366), which established the authority of military commissions to oversee trials for violation of laws of war, especially in the case of terrorist activity. The act authorized military trials for unlawful enemy combatants, defined here as

(i) a person who has engaged in hostilities or who has purposefully and materially supported hostilities against the United States or its co-belligerents who is not a lawful enemy combatant (including a person who is part of the Taliban, al Qaeda, or associated forces);

Or,

(ii) a person who, before, on, or after the date of the enactment of the Military Commissions Act of 2006, has been determined to be an unlawful enemy combatant by a Combatant Status Review Tribunal or another competent tribunal established under the authority of the President or the Secretary of Defense.

As an extension of President Bush's 2001 Military Order for the Detention, Treatment, and Trial of Certain Non-Citizens in the War against Terrorism, the 2006 act effectively cemented the ongoing practice of prosecuting suspected terrorists and affiliates in *military commissions or tribunals*. In both the order and the act, terrorism is viewed as an "act of war," suspects are prosecuted in military courts as "war criminals," and the military commissions are afforded jurisdiction of both martial law and law of war. Martial law jurisdiction, though contested, applies here because the Military Order and the Commissions Act assert that acts of future terrorism, as acts of war, "may place at risk the continuity of the operations of the United States government (Orentlicher and Goldman 2001, Bradley 2007)." In line with this statement, the President gives the military judicial authority because the statement implies that future terrorism may inhibit the civilian court system from effectively performing its duties. Law of war jurisdiction applies because of the nature of the crimes committed as well as the classification of the

perpetrator as enemy combatant, in which circumstance, “the Constitution does not require trial by jury (Orentlicher and Goldman 2001). Later, the Military Commissions Act of 2009 (Pub. Law 111-84), deemed a portion of the 2006 act unconstitutional and guaranteed military detainees the right of habeas corpus and the right to access federal courts to challenge their detentions.

Individuals not receiving prosecution through military tribunal, instead go through the federal civilian criminal court system. Conventional thought maintains that before the 9/11 attacks, criminal trials were the first response of the U.S. government when it came to prosecuting terrorists and their affiliates, and have since become relegated to prosecuting U.S. citizens and domestic terrorists (Chertoff 2011).⁴² Though military and criminal tribunals for terrorist prosecutions have both received strong opposition from rival cohorts, *criminal trials*, especially since 2001, have been considered to be notoriously lenient in sentencing and wholly ineffective at combating future terrorism (Said 2014; Banks, Nevers, and Wallerstein 2008, Macken 2011).

Take for example the 1994 domestic terrorism case, *Apprendi v. New Jersey* (Docket 99-0478). The defendant, Charles Apprendi, Jr., opened fire on a Black family that had moved into an all-white neighborhood. Apprendi was arrested, pled guilty to three of the twenty-three charges levied against him, and even with the attached hate-crime enhancement, was sentenced to a maximum of twelve years in prison. For this particular case, the statutory maximum, or the maximum amount of time that could be sentenced to Mr. Apprendi, was only ten years, and he received an additional two for the hate crime classification made by the presiding judge (Fuchs 2001). Apprendi appealed

⁴² The driving point here is that where prosecutions are concerned, before 9/11, the government elected for criminal prosecutions over military tribunals, and after 9/11, it more regularly opted for the latter. However, this statement does not make any claims about preferences of criminal justice responses more broadly.

his sentencing to the New Jersey Supreme Court, where a landmark decision was made to prohibit “sentencing enhancing” unless the decision is incorporated into the jury trial, upon which “any fact that increases the penalty for a crime beyond the prescribed statutory minimum must be proved beyond a reasonable doubt (Said 2014).” Apprendi’s sentence was deemed unconstitutional and he served five of his ten years before being released to a halfway house (Newman 2000). To this day, Apprendi v. New Jersey is one of the most commonly cited cases in the discussion of whether or not terrorism should be sentenced as a crime itself or as an aggravating factor (something which increases the severity of a crime; Wattad 2006).

An example of leniency in transnational terrorism sentencing can be seen in the case of People v. Reyati. In 1994, Rashid Baz (Lebanon) shot at a van of 15 Orthodox Jewish students on the Brooklyn Bridge, resulting in one fatality and three injuries. Bassam Reyati, was Mr. Baz’s uncle and cab driver who both drove him to the scene and helped him escape and conceal evidence after the fact. Mr. Baz received 141 years to life in prison, however, for helping him complete his attack, Reyati was sentenced to five years of probation and a 1000 dollar fine (Sullivan 1996). Reyati appealed his conviction to the Supreme Court, but was rejected; nonetheless, his role in the attack carried no prison sentence.

In these two cases, and in hundreds more, legal, military, and political officials, as well as the U.S. citizens and the international audience, questioned the legitimacy of the criminal legal system in prosecuting and sentencing terrorist convictions. News outlets have commented that prosecution in criminal court is the “wrong approach,” reporting in 2003 that of 879 individuals convicted of terrorist crimes since 9/11, 263 of them were

released for time served by the time their trials had concluded and sentences were a statutory minimum of 20 years in only five cases (Harper 2003, Goldsmith 2010).

The question of whether or not civilian courts could effectively prosecute and punish (sentence) individuals convicted of crimes associated with terrorism, was likely a major consideration for then President Bush's 2001 military order and the 2006 act regarding the detention and treatment of suspected terrorists (Beard 2007). Though these documents authorized the post-9/11 transition of terrorist prosecutions from civilian courts to military tribunals, including those of some U.S. citizens, civilian courts still try cases involving terrorism though not in the same volume as before.

In addition to detention, court cases, and prosecutions, the government may respond to terrorist incidences by operations, interrogations, deployments and other activities associated with anti- and counterterrorism. In order to classify these activities as part of the criminal justice or military models of counterterrorism, it must be clear which organization is the primary actor seeing the actions through. *Criminal justice actors* include any member(s) of law enforcement groups or agencies, including local, state, and federal police, federal agencies such as the FBI, CIA, NSA, Department of Justice, Department of State, Department of Homeland Security, Immigrations and Customs Enforcement, Department of the Interior, Department of Treasury, and the Defense Criminal Investigative Service (Department of Defense). Generally, these types of actors perform specific types of counterterrorism responses which include but are not limited to investigations, interrogations, arrests and apprehensions, raids, formation of task forces and covert operations, and the creation and collaboration of legislation and public policy. *Military actors* include all of the armed services and reserves (Air

Force, Army, Marines, Navy, and Coast Guard during times of war), military personnel or directives from within the Department of Defense, and the Defense Intelligence Agency (DIA). Though the DIA informs on both civilian and military intentions and capabilities, its highest executive, save the President, is always at least a three star general or admiral, and unlike the CIA whose intelligence focus is more broad, it emphasizes defense and military topics during times of peace and war (see DIA Official). Therefore, any responses from the DIA to a terrorist threat or attack are considered to fall under the military model of counterterrorism. The types of actions performed by military actors may include the same actions performed by criminal justice actors, but should be extended to include, among other things, troop deployments, border patrol and territorial occupation, diplomacy and humanitarian aid, foreign law enforcement and military training, weapons and tactical equipment procurement, firefights, air strikes, special and covert military operations, and targeted killings.

The above section details the standards by which responses to terrorist threats and attacks are classified a criminal justice or military responses. A description of the components of each of the counterterrorism models is laid out in table 9.

Criminal Justice Model		Military Model
Classification of Terrorism		
Perpetrator	Crime	Act of War
Actors	criminal suspect law enforcement, federal executive departments, governmental agencies, FBI, CIA	unlawful enemy combatant armed forces, DIA Department of Defense
Location	domestic, abroad	predominantly abroad
Types of Response	investigations, arrests, raids, task forces covert operations	CJ responses and troop deployments, border patrol, territorial occupation, diplomacy humanitarian aid, weapons and tactical equipment purchases firefights, airstrikes, targeted killings
Detention	state, federal prison	military prison, base
Prosecution	criminal or civil court	military tribunal
Conviction Requirement	Unanimous jury decision	2/3 vote by appointed military jurors
Sentencing	depends on crime; federal: possible statutory maximum of life state: possible death penalty	depends on crime; possible death penalty

Table 9. Comparing the Two Counterterrorism Models

A criminal act will be defined as terrorism when the following criteria are met:

- An individual or group commits or intends to commit an act of violence, or an individual affiliates with or provides material support to an individual or group known to commit or intending to commit an act of violence
- The act is intended to harm, threaten, or incite fear in an audience greater than the immediate victims
- The act is intended to achieve or bring awareness to a political, religious, or ideological goal

A criminal justice response to terrorism will have one or more of the following characteristics:

- Is carried out by one of the aforementioned law enforcement groups or agencies, either on domestic soil or abroad
- An individual suspected of committing a terrorist act or of associating with a terrorist group is detained in a civilian prison, hospital, or behavioral treatment facility, or held in custody by a law enforcement agency
- An individual suspected of committing a terrorist act or of associating with a terrorist group is prosecuted or tried either in criminal or civil court at the state or federal level⁴³

A military response to terrorism will have one or more of the following characteristics:

- Is carried out by one of the aforementioned military actors, including the armed forces or other military agencies, possibly on domestic soil, but especially abroad

⁴³ There is speculation that in the future transnational terrorists may be tried at the International Criminal Court. This will most likely only occur if the ICC extends its jurisdiction under the justification that terrorism is labeled a crime against humanity. For now, the ICC does not have jurisdiction to prosecute transnational terrorism cases (Cohen 2012).

- Typically, and especially after 9/11, the suspect is given the legal status of unlawful enemy combatant
- An individual suspected of committing a terrorist act or of associating with a terrorist group is detained in military prison or hospital, military base or naval ship, or held in custody by an agent of the armed forces

Though these models are presented independently and separate from one another and have distinct qualities, in practice, the two often overlap. In some circumstances, law enforcement agencies such as the FBI and CIA will work with special operations forces or other military agents to track, detain, and interrogate terrorist suspects. In other circumstances, suspects are apprehended by U.S. armed forces and sent back to the United States where they are detained in civilian prisons. Since 9/11, and especially since the Military Commissions Act of 2009, there have been many cases in which suspects are detained in military prison, tried in military court, but appeal these decisions and receive a new trial in civilian court. In any circumstance where both criminal justice and military responses are used, I recorded it as such, making special note of which type was the first response.

Data and Methods

The purpose of performing qualitative analysis is to better understand the applications of the theoretical models discussed in this research. The criteria and definitions associated with the criminal justice and military models of counterterrorism presented in the previous section are derived from the theoretical framework and axioms presented in chapter (3). In order to demonstrate the existence of these models in practice, one must know:

1. How does the state understand transnational terrorism?

2. What actors or institutions are involved in counterterrorism measures? And which ones are given priority?
3. How are principles, policies, and laws related to counterterrorism applied in practice?
4. How does the state explain or justify the use of adopted practices or perspectives on terrorism and counterterrorism measures?

In order to answer these questions I performed a combination of historical, legal (content), and discourse analysis. Historical analysis uses historical events, documents, and processes to develop a narrative of a particular topic or phenomena explaining how and why events occur the way they do (Mahoney and Rueschemeyer 2003). Though the primary data sources of historical analysis are often historical documents or historian interpretations, for the purposes of this research, historical analysis is performed using specific governmental documents and official military reports. Content analysis is systematic analysis used to determine the presence of certain words, phrases, concepts, or themes within texts or media (Krippendorff 1980). Discourse analysis focuses on understanding language and subject in order to extract key premises, themes, and concepts and to form relational associations. It is considered to be the least systematic of the types of qualitative analyses employed, but is only used on rare occasions in this research where ambiguity in verbal or written discourse necessitate methodological decisions about that sources relevance to the data (Jorgensen and Phillips 2002).

For all three forms of qualitative analysis, I used the Lexis-Nexis Database to examine more than 5000 news articles and legal case documents from major news publications all over the world from 1970-2014, some of which include The New York Times, Washington Post, Toronto Star, New Zealand Herald, Irish News, Yale Journal of International Law, Harvard

Journal of Law and Public Policy, Dawn (Pakistan), and the Daily Star (Lebanon).⁴⁴ Global news sources were chosen as the main source of data for this portion of the qualitative work because they contain a collection of information points regarding terrorism events, terrorist groups and individuals, counterterrorism measures, counterterrorism actors, and terrorism prosecutions and convictions. The sample size of publications, such as newspapers, news wires, and law reviews, were then reduced to only those relevant to this research including analyses and related reports of transnational terrorist events, namely events committed or plotted abroad against American citizens or property or events that were committed by non-U.S. citizens on American soil.⁴⁵ In addition, content analysis was performed on legal case documents cataloged in the database of the Supreme Court of the United States, United States Courts Public Access to Electronic Court Records (PACER), and state level databases of supreme, civil, and county court records. Historical analysis not only examined the content of the new articles returned in the Lexis Nexis search, but also included documents and press releases from the U.S. Department of Defense, Department of State, Office of the Executive as well as over 150 documents from the Defense Technical Information Center, which serves military operations reports written by military personnel. Finally, discourse analysis was performed on transcriptions and quotes by the primary counterterrorism actors listed in table 9, also including the Department of the Executive and the President and presiding judicial officials and prosecutors of cases associated with terrorism. Discourse analysis came from the news and legal case articles returned in the

⁴⁴ To identify relevant articles, I relied on the following combination of terms: Terroris* AND criminal OR case OR prosecution OR court OR detention OR sentenc* OR apprehen* OR military OR army OR Navy OR Naval OR Marine* OR armed forces

⁴⁵ I keep meticulous records of multiple publications surrounding the same event and/or prosecution. I kept a tally for how many times each event/case appeared in my search. I coded the event only once, but used the duplicate articles to fill in any missing information. The duplicate publications, meaning the separate publications that were reporting on the same events, were then kept file in a separate document which classified the source, date, title, and event/case.

Lexis Nexis search, as well as from public statements from relevant government representatives, made public through text transcriptions and videos on respective official government websites.

Using these data sources, I coded over 300 *transnational* terrorism related events. It is important to note that the quantitative data, which coded 829 total events, does not include plotted terrorists events that were not carried out, while the qualitative data, especially the legal cases, include many arrests, detentions, prosecutions, operations, investigations, etc., of plotted attacks or terrorists associations and material support. My analysis covered over 230 criminal proceedings (civil and military) and arrests involving allegations of terrorism, almost 150 military operations, and hundreds of statements made by relevant actors. While this analysis cannot possibly include every circumstance of terrorism (carried out or plotted) or support and association, it covers enough events, focusing on the concepts and definitions laid out in the previous section, to provide reliable answers to the questions posed above.

Results of Historical Analysis of U.S. Counterterrorism Responses

Of the 400 events examined in the qualitative analysis, over 150 (or 38%) of the included some type of military response. This number does not include the counts of detentions in Guantanamo or domestic military bases or trialed by military tribunals, as that information will be presented with the content analysis. Rather, the response types represented in this data include troop deployments, border patrol and territorial occupation, foreign law enforcement and military training, firefights, raids, air strikes, targeted killings, detentions abroad, covert and special operations, and formation of other task forces. In many circumstances, multiple types of responses are deployed for a singular event or individual/group.

There were several instances of retaliation against state sponsored terrorism that included full scale military operations. The three of those that occurred before 9/11 included Operation El

Dorado Canyon against Libya in 1985, Operation Southern Watch against Iraq in 1993, and Operation Infinite Reach against Afghanistan and Sudan in 1998.

Operation El Dorado Canyon. The mid 1980s marked the rise in antagonistic relations between Libya, who had a long history of accusations of terrorism, smuggling, and espionage among other things, and the United States (Collins 2004). Leading up to December 1985, the U.S. and other members of the international community had suspected Libya of engaging in state sponsored terrorism. It is purported that the Libyan government had trained more than seven thousand terrorists, supplied more than 100 million dollars in arms and financial support to terrorist organizations, in addition to supplying housing, fake passports, and safe passage to many more (Prunckun and Mohr 1997). The U.S. Department of State reports estimates that Libya gave more financial support to terrorist organizations in the 1980s than any other state apart from Iran.⁴⁶ In this case of state sponsored terrorism, tradition law enforcement methods used to combat terrorism were highly problematized. Libya was accused of providing bases and training support to the terrorist organizations responsible for the airport attacked in Rome and Vienna in December of 1985. By January 1986, diplomatic relations between the two countries had come to complete standstill. In March, Libyan forces launched surface-to-air missile at naval aircraft and the U.S. Navy responded with force from their position in the Gulf of Sidra. This limited naval engagement culminated to a full-fledged military operation after the U.S. found incontrovertible evidence of Libya's involvement in the bombing of TWA flight 840 over Greece on April 2, which killed four American citizens. Two days later, Libya was blamed for the Berlin bombings at La Belle Discotheque wounded 261, 79 of whom were Americans and killed four Americans, one of which was a U.S. soldier (Endicott 1986, Collins 2004).

⁴⁶ <http://www.nytimes.com/1986/01/09/world/text-of-the-state-department-report-in-libya-under-qaddafi.html?pagewanted=all>

Over 100 U.S. aircraft were called into action, bombing five specific target locations in Tripoli, Benghazi, and across northern Libya. Long range strikes at “terrorist centers” began April 14 and included aircraft and operations support from both the U.S. Air Force, Navy, and Marine Corps and involved joint missions with the British Royal Airforce (Endicott 1986). In addition, Air Force EF-111 Ravens employed electronic countermeasures in order to deceive and evade Libyan air defenses. Naval aircraft struck Benina Airfield along with Benghazi and Aziziyah barracks in Tripoli and culminated the operation in a strike against Bilial (a terrorist training camp) and a USAF strike on Tripoli military airport (Collins 2004).

Operation Southern Watch. In 1991, United Nations Security Council Resolution 688 demanded an end to government led repression and observance of human rights law in Iraq. After Saddam Hussein’s regime refused to comply, the U.S. Central Command (CENTCOM) established a no fly zone over the southern part of the country in order to consolidate operations of the organized Joint Task Force Southwest, to command and control the operation, and to monitor compliance (Hines 2000). The purpose of this contingency was mean to not only enforce UN sanctions, but also to protect Shiite Muslims undergoing prolonged attack from Sadaam’s regime in the aftermath of Desert Storm. In addition to disregarding international human rights law, the Iraqi government breeched laws on nuclear, biological, and chemical weapons programs inspections (Allen 1992).

U.S. operations in Iraq escalated after an assassination attempt on former President George H. W. Bush in Kuwait 1993. The U.S. government interviewed over sixteen suspected terrorists and seized several hundred pounds of bombs and explosives, and despite initial caution that the Iraqi government might not be involved, investigators became convinced by schematics and bomb designs that indicated Iraqi involvement. The FBI concluded that Iraqi intelligence

Service (IIS) must have directed or been compliant in the assassination plot and the U.S. was “faced with the choice between doing nothing and using force” against what appeared to be state sponsored terrorism (Kosnik 2000). USAF responded by bombing the headquarters of Iraqi Intelligence Service based on “compelling intelligence information” that apprehended suspects were working under the orders of the IIS (Malvesti 2001).

The Joint Task Force contingency continued in Southern Iraq and culminated two additional terrorist attacks nearly two years later. In November 1995, Saudi Arabian and U.S. forces were attacked in Riyadh, with the perpetrators bombing a U.S.-leased military building resulting in five deaths and numerous burns and injuries (Gillespie 2011). A terrorist organization known as the Islamic Movement for Change claimed responsibility for the attack and U.S. officials speculated their motivations surrounding continued military operations in Iraq and Kuwait (CNN News). Several months later, June 1996, a terrorist bombing killed nineteen and wounded 547 USAF airmen at Dhahran Airbase in Saudi Arabia, also known as the Khobar Towers bombings. The towers were being used to house coalition forces of Operation Southern Watch and the attack was believed to have been carried out by Hizbollah Al-Hejaz, whose group was arrested and dismantled after the attack (Matthiesen 2010).

In response to these attacks, the U.S. amped up military operations in Southern Iraq. On September 3, 1996, USAF enacted an airstrike bellow the 32nd parallel, while naval forces launched cruise missile strikes. President Clinton expanded the no fly zone to just south of Baghdad, which, in conjunction with Operation Northern Watch and Operation Provide Comfort, extended over most of the airspace in Iraq (Allen 1992). These terrorist attacks also resulted in the relocation and commission of U.S. forces to areas more easily defended against terrorism as part of the newly created Operation Desert Forces (Hines 2000).

Operation Infinite Reach. Prior to the embassy bombings in 1998, al-Qaeda had engaged in significant levels of violent activity, including the billeting of 100 American peacekeepers at the Somali border, the attempted bombing of a hotel in Yemen, the 1993 World Trade Center truck bombing, the killing of 18 American soldiers in Mogadishu, a car bomb in Riyadh which resulted in seven deaths, an assassination attempt on Egyptian President Hosni Mubarak, the Khobar Tower bombings which resulted in the death of 19 and injury of 264 American soldiers, and a bus bombing in Egypt that killed nine tourists (Weiner 1998, Wedgwood 1999, Phinney 2003). After his expulsion from Khartoum in 1996, bin Laden strengthened extremist operations in East Africa, placing terrorism cells in Nairobi and Dar-es-Salaam, Tanzania. On the morning of August 7, 1998, al-Qaeda set off truck bombs at the U.S. embassies in these two Africa cities. The explosion in Nairobi destroyed the embassy and collapsed a nearby building killing 213 people and wounding over 4,000. The bomb in Dar-es-Salaam resulted in eleven deaths and 85 injuries.⁴⁷

President Clinton moved swiftly and forcefully. After the Oklahoma City bombings in 1995, “Congress empowered [Clinton] to use all necessary means, including covert action and military force, to disrupt, dismantle, and destroy international infrastructure used by international terrorists including overseas terrorist training facilities and safe havens (Phinney 2003).” The U.S. received same day evidence of bin Laden’s involvement and within five days had “very reliable” proof of his involvement as well as the plotting of future attacks (Myers 1998). Claiming a right to self-defense, U.S. government organized a naval counterattack that involved cruise missile strikes in Afghanistan and Sudan, as well as brief travel through Pakistani airspace and the Arabian Sea.

⁴⁷ Statistics taken from *The 9/11 Commission Report* authored by the National Commission on Terrorist Attacks Upon the United States. Available <https://9-11commission.gov/report/>

On August 14, the simultaneous attacks were launched against Khost training camp, also known as “Terrorist University”, just south of Kabul and al-Shifa pharmaceutical factory, believed to engage in the production of chemical weapons, in Khartoum North. Naval forces, situated in the Arabian Sea, launched a strike of 70 Tomahawk missiles over Pakistani airspace, hitting their intended target of Khost, ultimately resulting in the deaths of around 50 individuals.⁴⁸ Over six thousand kilometers away on the Red Sea Coast of Sudan, naval aircraft carriers launched thirteen Tomahawk missiles at al-Shifa, destroying the entire factory, killing the night watchman and wounding ten Sudanese (Phinney 2003).

Operation Enduring Freedom. Of the 151 events that received military responses, 79 of them occurred before the 9/11 attacks. That military responses before 9/11 make up over half of the observations reflects the results of the quantitative analysis; that 9/11 did not necessarily signify a shift from the criminal justice model to the military model for the U.S. in counterterrorism response behavior. Instead, the historical analysis seems to indicate that, as regards transnational terrorism, the military model of counterterrorism was sometimes a first line of defense well before 9/11. Recall that this specific set of observations does not include any military tribunals or detentions and it is important to note that the first military prosecution or detention that I recorded occurred in 2001, so prosecutions and detentions should not be considered a possible response type until after 9/11. Even so, these 79 events of military responses occurring before 9/11, when considered with the entirety of the data, account for 20 percent of all of the observations.

Though many of the response types mentioned under the military model in table (1) were employed before 9/11, some of them became more frequent after the attacks. For example, I

⁴⁸ The death toll is disputed by U.S. intelligence officials and leaders of the groups being targeted at the camp. Reports have ranged from as little as six deaths, to more than 50 deaths (Bearak 1998).

recorded five targeted killings in the thirty years before 2001. This low number is likely due in large part to Executive order 12333, issued in by President Reagan in 1981, which effectively stated that any agent of the U.S. shall not engage in or conspire to engage in assassination, as long as the individual or organization is not in combat against the United States, in which case the order does not apply. This order was later relaxed by the Clinton Administration and counteracted by the Bush Administration which authorized “all necessary and appropriate force” against terrorism (Kaplan 2006). Bush’s congressional resolution led to the increased use of unmanned combat aerial vehicles (drones), so in the thirteen years after 2001, I recorded 117 targeted killings, while the Office of the Director of National Intelligence (ODNI) officially reports the number of deaths to be over 2,000.⁴⁹

Tactics like bombings and air strikes appear to have been more frequent before, while, missions deploying U.S. special operations forces appear to be on the rise post 9/11. The DTIC documents from the historical analysis suggest that the increase in special operations is largely due to the growing military budgets which are better able to fund and support counterterrorist and counterinsurgency missions. In fact, the years following major terrorist events or that have greater frequency of events showed larger increases in the military expenditures. For example, the quantitative data set recorded nearly 30 international terrorist attacks on the U.S. in 1991. In 1992, military expenditures increased six percent from the previous year and remained relatively stable or slightly increasing until they fell by 12 percent in 1995. This time period includes the Gulf War (ended February 1991) and humanitarian missions in Somalia, but also terrorist events

⁴⁹ This information is taken from the ODNI “Summary of information regarding U.S. counterterrorism strikes outside areas of active hostilities.” Published July 1, 2016. Available at <https://www.dni.gov/index.php/newsroom/reports-and-publications/214-reports-publications-2016/1392-summary-of-information-regarding-u-s-counterterrorism-strikes-outside-areas-of-active-hostilities>

Other sources have suggested that this report grossly underestimates the total number of deaths as well as the total number of strikes more broadly, imply that the death count is closer to 4,000 (Friedersdorf 2016, Shane 2016, Zenko 2016)

such as World Trade Center Bombings, for which the response was a special forces co-operation with Pakistani Inter-Services Intelligence that resulted in the brief military detention and eventual criminal conviction of Ramzi Yousef, and other counterterrorism responses such as Operation Southern Watch.

Results of the Content and Legal Analysis

Of the 232 criminal cases coded, there were 93 cases that included a military arrest, detention, or prosecution, accounting for 40 percent of the total observations. Fifty of these cases occurred before 9/11, which accounts for over half of all cases surveyed that included a military response. Of the 93 cases that included military response there were 20 convictions in military tribunals (occurring only after 2001) and 69 military detentions. Looking further into the detention observations, there were 4 cases in which a suspect was first held in military detention and later moved to criminal detention. Looking into the prosecutions data, there were 44 cases that were first held in military tribunals, appealed and later brought to civil criminal court and 9 cases that were first tried criminally and were later brought to military tribunal.

There are several conclusions that can be made by analyzing this data. First, when U.S. citizens are suspected of committing transnational terrorist attacks (i.e., a U.S. citizen affiliating with a known terrorist organization, or plotting an attack against Americans abroad) the government appears more likely to respond through the criminal justice system than with military force or tribunal. Of the 18 cases coded in which U.S. citizens were accused of an act of transnational terrorism, over 72 percent of them were responded to purely through the criminal justice system. These responses included law enforcement task forces, police apprehensions, federal and state prison detentions, and criminal court proceedings. The remaining 28 percent received at least some military response throughout its course, either independent of or in

conjunction with criminal justice approaches. Only one of these individuals, Jose Padilla, was tried in a military commission for his involvement with al-Qaeda and his plot to detonate a dirty bomb. In addition, individuals from Western democratic nations, who are often extradited back to their home countries for trial, are more often apprehended and detained by law enforcement officials. One exception is Omar Khadr, a Canadian, tried for war crimes and detained at Guantanamo Bay for his involvement in the September 11 attacks and association with al-Qaeda.

Affiliation with Islamist extremist groups seems to be another indicator of military response. Individuals listed as associating with groups such as al-Qaeda, al-Shabab, and Hizbollah were more often apprehended, detained, tried, or incapacitated through military means than individuals associated with other types of extremist groups. This appears to be true throughout the temporal range of the study, and is not limited to post-9/11 cases. In addition, individuals affiliated with al-Qaeda, specifically, are more often pursued through military responses even when an attack is not carried out than individuals who do not carry out attacks and are affiliated with other terrorist organizations. There were 57 cases in which an individual was tried for affiliation or for an attack plot that was not carried out. Of those cases, over 40 percent were listed as having affiliations with al-Qaeda and 77 percent of those individuals were pursued, apprehended, incapacitated, detained, or tried through military action. Furthermore, of the individuals accused of involvement in the 9/11 attacks, 92 percent were apprehended, detained, or prosecuted by military forces.

During the time frame of the analysis, individuals suspected of terrorist actions against the US came from every corner of the globe, including allies UK, Denmark, and Jordan; small countries like Eritrea, Lebanon, and Macedonia and large countries such as Russia, Egypt, and Saudi Arabia; representing nearly every continent with countries such as Japan, Canada,

Australia, Nigeria, Colombia, and France. However, individuals of certain citizenship may be more likely to be pursued via military response over or in conjunction with criminal justice responses. It has already been established that the U.S may be less likely to pursue military responses against individuals from western nations, but this assumption should be extended to include other allies, who are also predominantly Muslim nations, such as Egypt, Saudi Arabia, and Jordan.⁵⁰ Terrorist suspects from most other predominantly Muslim nations are often pursued using military action or a combination of military and criminal justice response types. In particular, these countries include Yemen, with over 90 percent of analyzed cases receiving a military response, Lebanon, over 80 percent, Pakistan, over 77 percent, and Sudan and Libya, with over 70 percent of cases analyzed having some type of military response.

The criminal justice model rests on a foundation of observance of democratic principles and preservation of individual liberties. Throughout the search, I kept a separate note for cases which reported civil liberties and human rights violations, especially those cases in which the American Civil Liberties Union or a human rights organization became involved. A little more than 10 percent of cases reported some type of rights violation, which include, but is not limited to denial of medical attention, torture and waterboarding, cruel interrogation tactics, illegal detention without due process or without charge, and denial of rights to an attorney. Based on the foundational principles of the criminal justice model, we would expect most of these cases to come from military apprehensions and detentions, but, in fact, nearly 60 percent of those cases occurred in the civilian criminal justice system. Suspects held in civil-criminal detention were reportedly regularly denied access to doctors, attorneys, and speedy trials and were subject to torture and enhanced interrogation techniques such as sleep deprivation, isolation, and forcible

⁵⁰ Though their country's claim to statehood may be controversial, individuals from Palestine join the list of those more often pursued through criminal justice response than other predominantly Muslim countries.

drinking of deathly amounts of salt water. Military detentions add several other violations to the list including beatings, burnings, and forced sodomy.

Overall, the data suggest that the U.S. more often uses force, specifically covert and special operations, raids, air strikes, targeted killings, and troop deployments, in response to terrorism when the act of terrorism is carried out abroad. This fact is evidenced by four major military operations in response to state sponsored terrorism (el Dorado Canyon, Southern Watch, Infinite Reach, Enduring Freedom). Of the 40 coded attacks that were actually carried out against American citizens or property on foreign soil, 85 percent were responded to using some form of the military responses listed in this paragraph. Of the 15 percent of cases that received only a criminal justice response, over 40 percent were U.S. citizens.

Results of the Discourse Analysis

The term enemy combatant first appears in the data in 2000 under the case of David Hicks, an Australian, who was detained at Guantanamo for his involvement with the Lashkar-e-Taiba, and for his training and creation of recruitment videos for an al-Qaeda training camp known as al-Farouq. Since then the term appeared in case files of 27 individuals, out of the 44 total that were tried at any point in military commission. In addition, the term appeared in 130 of the over 300 statements that were coded by relevant political actors, the bulk of which were after 9/11.

Similar terminologies that suggest the acts of the individual are to be considered an act of war appear intermittently before 9/11. Some examples of these terminologies include “war criminal (crimes),” “waging war,” “war time acts,” while an example of a predominantly post

9/11 phrase is “war against terrorism (war on terror).”⁵¹ While the Bush administration brought the phrase “war on terror” to the forefront of political discussion, my analysis codes former Secretary of State Madeleine Albright as deeming terrorism the “war of the future” in 1998.⁵² Even so, the Secretary’s statement came half a decade after Congress officially declared terrorism an “act of war” (Crona and Richardson 1996, Perl 2007). The case files suggest that individuals receiving the label of enemy combatant or accused of committing war crimes or using terrorism to “wage war” are often pursued and apprehended through military means, whether alone or with the help of law enforcement agencies like the CIA or FBI or foreign police forces, detained at a military base or prison, or receive a military tribunal. In fact, all of the 20 convictions in military court remarked the defendant as an enemy combatant or war criminal.

Recall from the previous section, that the U.S. is more likely to use criminal justice response on its own citizens when suspected of terrorism, with a few exceptions, including Jose Padilla. From the outset, Padilla was considered an “enemy combatant”, as were the other two major cases of U.S. citizens who were pursued through some form of military response.⁵³ John Walker Lindh was an “enemy combatant” arrested in 2001 for fighting with the Taliban against coalition forces, captured by U.S. Army Special Forces and detained at Camp Rhino outside Kandahar. He was later indicted by a federal jury on a number of charges, including conspiracy to commit murder, providing material support to a terrorist organization, and contributing and supplying service to al-Qaeda and the Taliban. Yasser Esam Hamdi, a naturalized U.S citizen raised in Saudi Arabia, was first captured by the Afghan Northern Alliance forces in November

⁵¹ Here the phrases “war against terrorism” and “war on terror” should be taken not as proper nouns reflecting the Global War on Terrorism or the War on Terror, but rather reflect a depiction of how the U.S. should respond to and treat the actions of the individual or group suspected of committing terrorist acts.

⁵² This is not an admission that Madeleine Albright was the first to use this phrase or similar phrases, but simply reports that in this particular analysis, the record of her speech is the first. Reported in “Our target was terror.” Newsweek Magazine, August 30, 1998. Available <http://www.newsweek.com/our-target-was-terror-169580>

⁵³ These are considered to be major cases because of the amount of publicity they received when compared to the few other cases that met this specific criteria.

2001, but was recaptured after a prison uprising, which resulted in a three day battle with U.S. AC-130 gunships and Black Hawk helicopters. Hamdi was transported to and detained in Guantanamo Bay and later transferred to a naval prison in Norfolk, Virginia. Though at first, he refused a lawyer, the “enemy combatant” petitioned a federal court and his case was heard in the Supreme Court in 2004 (see Hamdi v. Rumsfeld above).

Another major point highlighted by the trials of these three terrorist suspects, who were also U.S. citizens, is their affiliation with al-Qaeda. This, too, may have played in their characterization as enemy combatants. While there were a few times throughout the analysis that individuals associated with al-Qaeda and its affiliates, in my limited search, nearly every circumstance in which an individual was classified as an enemy combatant or relevant actors used the rhetoric of “war criminal” or “waging war”, that individual was also mentioned as having affiliation with al-Qaeda, the Taliban, or Osama bin Laden. It is likely that affiliation with one of these groups, dictated the subsequent labeling of the individual as enemy combatant. In addition, status of enemy combatant may have ultimately led to these individuals’ pursuit through military action.

Conclusions

The qualitative analysis seems to reflect the results of the quantitative analysis in several respects. First, it reassures the conclusion that the U.S. has consistently used military responses in its counterterrorism strategy, contradicting conventional thought which suggests military responses are post-9/11 phenomena. It affirms that 9/11 may not have been the significant turning point in counterterrorism policy as regards displays of force or military action in response to terrorist events. This is not to suggest that 9/11 was not a significant event in the country’s history or in shaping the future of its counterterrorism policy more broadly. Rather, it

suggests that 9/11 did not signify a sudden break in counterterrorism policy specifically shifting from a wholly criminal justice approach to a wholly military approach. It shows that military responses have long been a strategic tool, either independently of or in conjunction with, criminal justice response to terrorism.

Second, discourse analysis affirms that GDP may not be the sole or primary consideration as regards military action in the face of terrorism. The quantitative analysis found GDP to be an insignificant predictor of military expenditures in a system that included terrorist events. Discourse analysis returned consistent rhetoric of ramping up public and international safety and security through military means in the wake of terrorist events. The rhetoric of increased military action was even sustained through the country's recessions in the 80s, early 90s, and the Great Recession beginning in December 2007. This implies that decision makers consider security policy, specifically counterterrorism policy, distinct from other economic matters and supports prior research suggesting that the relationship between military spending and economic growth to be insignificant, or at the very least, varies from short-run to long-run projections (Biswas and Ram 1986, Knight, Loayza, and Villanueva 1996).

Third, the existence of ongoing conflict does not appear to be at the forefront of consideration or discussion when electing to respond to terrorism. Rarely, with the exception of the War on Terror, do actors mention counterterrorism strategy in juxtaposition with other defense type strategies and operations. Not one of the speeches coded around the time of Operation Southern Watch mentioned our involvement in the Bosnian War, or that our presence in the Balkans somehow affected our military counterterrorism capabilities in Iraq. This echoes the quantitative findings that the existence of ongoing conflict is an insignificant indicator of future military expenditures in a system that includes annual acts of terrorism and fluctuations in

public opinion. In fact, in each decade of the analysis the U.S. was engaged in some kind of militarized conflict. Yet, for example, when the embassies were bombed in Africa in 1998 the U.S. sent naval reinforcements, despite our deep involvement in the war in Kosovo. Other examples include Army Special Forces Operations after the 1993 World Trade Center bombing while we were engaged in the Somali Civil War, and Achille Lauro cruise ship hijacking in 1985 to which President Bush responded by sending Navy SEAL Team Six and Delta Force for a rescue mission (Bohn 2004). Rhetoric surrounding these terrorist events did not include discussions of the existing militarized conflicts in which the U.S. was already engaged. In fact, until Operation Enduring Freedom and Operation Iraqi Freedom, it was rare that a relevant counterterrorism actor, and especially the President, would discuss terrorism and intent for a militarized response in the same statement as an acknowledgment of an ongoing militarized conflict.

The qualitative results also suggest many things that the quantitative data simply could not measure. Where the quantitative analysis focused mainly on the link between terrorism and the military, the qualitative analysis answers more questions about criminal justice response to terrorism and the relationship between the two counterterrorism models presented. What the results show is that the two models are not necessarily independent of one another. For parsimony's sake, the theories of the counterterrorism models are presented as two distinct concepts, separate from one another, but in practice the two very much overlap. Historical and content analysis gave narrative of military forces operating alongside police forces in the pursuit and capture of terrorist suspects, of military detention facilities operating alongside criminal courts, and, most important, working simultaneously through whatever means to combat future terrorism.

Discourse analysis confirmed that terrorism was not really discussed in terms of war until the late 1990s. A few of the DTIC documents spoke about terrorists as war criminals, or as waging war against the U.S., but official rhetoric from the Executive Office, Cabinet Offices, or other relevant actors mainly talked about terrorism on its own terms; as terrorism, with intermittent discussion of the criminality of it. It also suggests that 9/11 did not necessarily change the way that relevant counterterrorism actors viewed or understood terrorism as concerns the dichotomy of the criminal justice and military models. I believe it might be incorrect to say that terrorism was once understood as crime and since 9/11 is understood as an act of war. Rather, terrorism became understood as an act of war in the early 90s with Congressional declaration of its legal status as such and became a permanent part of the rhetoric a few years later. Furthermore, terrorism never seemed to be understood a ‘just a crime’ rather it was often discussed as its own category of deviance or a culmination of the most unspeakable violent criminal acts.

The content analysis demonstrated a relationship between which counterterrorism model was used to pursue a suspect and the suspect’s citizenship and/or organizational affiliation(s). Suspects from certain non-ally countries, especially those that are predominantly Muslim appear to be pursued more through military means, while suspects from Western states from ally states of the U.S. appear to be pursued mostly through criminal justice means. Additionally, individuals who have affiliations with al-Qaeda, Taliban, or bin Laden are almost always pursued through some type of military response. It also suggests that the criminal justice model may be no more likely than the military model to observe due process, civil liberties, and human rights.

How do these results speak to the four questions posed a few sections back? Recall,

1. How does the state understand transnational terrorism?
2. What actors or institutions are involved in counterterrorism measures? And which ones are given priority?
3. How are principles, policies, and laws related to counterterrorism applied in practice?
4. How does the state explain or justify the use of adopted practices or perspectives on terrorism and counterterrorism measures?

First, the U.S. originally understood terrorism as its own class of offense, but sometimes spoke of it in terms of existing criminal rhetoric. It grew to understand terrorism as an act of war beginning in the 90s, and solidified that understanding through the 2000s and 2010s. Second, the qualitative analysis gives a better understanding of which actors are involved in counterterrorism and which ones are most important. While an expansive list of relevant actors are given in Table 1, the most important actors in transnational counterterrorism appear to be the President, armed forces, CIA, FBI, Secret Service, and criminal court officials. Third, relevant laws to counterterrorism have been discussed throughout the dissertation, and have proven to be important factors in shaping counterterrorism responses and how those responses are carried out. At the same time, the laws leave room for ambiguity so that decision makers have room to make judgements based on the evidence of the case at hand. In circumstance where decision makers over step their boundaries, the criminal justice system is ready to supersede when necessary (for example *Hamdi v. Rumsfeld*). Finally, as U.S. rhetoric shifted toward an understanding of terrorism as a war crime, it was much more fluid for decision makers to justify military responses and harsher criminal sentences because terrorists are “enemy combatants,” who “wage war” against the U.S. and its citizens. The U.S. long painted the image of the “savage” enemy who committed violence against unsuspecting “innocents”, and it was this type of dehumanized

pictorial of “terrorists,” rather than individuals, criminals, or defendants, that was used to validate the government’s response.⁵⁴

⁵⁴ These words come from several presidential addresses, including President Reagan’s 1984 debate with Walter Mondale, President Bush’s 1991 State of the Union Address, and President Clinton’s 1995 State of the Union Address.

Conclusion

This dissertation set out to answer three questions: (1) How do governments respond to terrorism, (2) What determines the choices of states' counterterrorism strategies, and (3) how do these strategies affect other domestic political phenomena? In order to answer these questions, I synthesized terrorism and counterterrorism literature from multiple disciplines, international relations, law, criminology, and, to a lesser extent, sociology, alongside practical conceptualizations, policies, and procedures of major counterterrorism actors and institutions. I examined the history of counterterrorism practice in the United States to afford a deeper conceptual and practical understanding of the criminal justice and military models of counterterrorism. These models were then theorized for the purposes of empirical investigation, both quantitative and qualitative. I performed vector autoregressive analysis to investigate the codependent relationship between terrorism and U.S. military activity as outlined in the military model of counterterrorism, as well as included a measure for the role of public opinion, which is known in the American Political Science literature to be a driving force of military spending. I performed qualitative analysis to further investigate the criminal justice model of counterterrorism, as well as to uncover the reasons and justifications for varying U.S. counterterrorism strategies. Both the quantitative and qualitative results suggest that neither model is wholly effective at combatting and preventing terrorism.

So, what does it mean to combat terrorism? If terrorism is understood to be political, ideological, or religious violence with the goal of inflicting fear upon a larger audience, then state's counterterrorism tactics must reflect this definition and attempt to preclude terrorists from accomplishing their supposed end goal of socio-political change. The U.S. has attempted a strategy which includes applying the rule of law, enforcing a strict no concessions policy,

gathering vital intelligence, fostering international cooperation, administering harsh penalties to perpetrators, maintaining impenetrable physical, financial, and technical security, and promoting coordination among domestic counterterrorism agencies. However, success has been lacking in several of these areas and the U.S has yet to adopt a best practice counterterrorism strategy that targets the utility of terrorism at its core.

Research remains relatively inconclusive about what the origins of terrorism may be and what allows it thrive and flourish, making it exceedingly difficult for counterterrorism policies to target terrorism at its source.⁵⁵ Instead, states are left to pull from their existing repertoire of criminal justice and military oriented strategies that merely react to the existence of terrorism rather than to prevent it before it begins. Perhaps another complication to the prevention of terrorism at its source is the lack of a precise and universal definition of the concept. It seems as if each domestic agency, both in the U.S. and elsewhere, operate with their own understanding of what constitutes a terrorist act, effectively narrowing the ability for interagency cooperation. Even more, the lack of a universal definition by states limits the opportunities for them to cooperate on policy and response coordination.

The biggest stride towards international cooperation on a counterterrorism regime came with the UN adoption of the Global Counterterrorism Strategy. Through its adoption, members agreed to a common strategic and operational approach to counterterrorism, but the practical aspects of this approach, however, remain vague. For example, the plan of action agrees to “consistently, unequivocally, and strongly condemn terrorism” and to “take urgent action to

⁵⁵ A breadth of research has been done about the roots of terrorism, including the role of poverty, socio-economic conditions, socio-political conditions, liberalism and civil liberties, women and minority empowerment, and many more, but as one study finds conclusive results, the next study may render those results inconclusive. See for example Kurrild-Klitgard et al. (2006), and Taspinar (2009) who argue poverty to be the root cause of terrorism, Piazza’s (2006) and Abadie’s (2006) studies which finds the relationship between poverty and terrorism to be inconclusive, while others argue a positive association between social and financial affluence and the rate of participation in and subsequent effectiveness of terrorist groups (see Bueno de Mequita 2005 and Benmelech and Berrebi 2006).

prevent and combat terrorism” through full cooperation of “counterterrorism subsidiary bodies.” This plan of action is, in fact, devoid of any real conversation about actions that will be taken to combat terrorism or the necessary actors and institutions involved.

Instead of international cooperation against terrorism, states are mostly left to make counterterrorism policy decisions at the domestic level. This is where thorough conceptual and theoretical knowledge of counterterrorism models becomes crucial for understanding how states view terrorism and its perpetrators, what actors and institutions are involved in the counterterrorism process, what tools are within the state’s repertoire and how they are employed, what institutions, policies, and procedures facilitate counterterrorism methods, and how states justify the methods they employ.

One way to discern types of counterterrorism policy is to view them as part of a criminal justice or military response type. The criminal justice model of counterterrorism has been presented as a type of government response to terrorism that pursues, detains, prosecutes, and punishes perpetrators uses the existing criminal justice system. The military model of counterterrorism is presented as a type of government response to terrorism that use military rules of engagement to preempt, pursue, detain, punish, and retaliate against terrorist and terrorism.

Both models have advantages and shortcomings. The criminal justice model is often thought of as the first line of strategy for two reasons. First, this model is deployed using the existing criminal justice infrastructure effectively lowering utility costs of combatting terrorism. Perpetrators are pursued by law enforcement actors and agencies whose tasks already include bringing violent criminals to justice. Similarly, these perpetrators, once apprehended are detained and tried based on existing criminal law through the civil-criminal court system.

Second, the criminal justice model sets its foundations on the observance of democratic principles such as rule of law and due process and on the respect of individual civil liberties. Democracies look to rule of law to maintain order and to prevent against arbitrary abuses of power, two qualities that are part of what makes a democracy a democracy (Hutchison 1987). Observing these principles through its counterterrorism policies allows democracies to maintain their liberal democratic identities while engaging in practices that otherwise might toe the line of indiscretion.

That said, it is this adherence to democratic principles and observance of human rights that infringes on the abilities of law enforcement actors to pursue and punish terrorists by any means necessary in order to prevent future terrorism. In addition, red tape in the bureaucratic legal system over burdens prosecutors with the tenets of evidentiary proof, presumption of innocence, public and speedy trials, and appropriateness of punishment and sentencing. Furthermore, sociological and political research suggests that terrorists may not be deterred by punishments offered through the penal system, up to and including the death penalty (Banks, Nevers, and Wallerstein 2008, Bedau 1997).

The military model alleviates some of the restrictions that domestic bureaucracy and institutions put on the criminal justice model, allowing military responses to be more flexible in their ability to prevent and combat terrorism. Following the military rules of engagement permits states to exercise their monopoly on violence and employ acts of “appropriate forcible response to terrorism (Travalio and Altenburg 2003).” Some argue this show of force acts as a plausible deterrent for future acts of violence generating a credible threat for the prospect of retaliation (see Crenshaw 1987 and Trapp 2007), while others argue that displays of force only devolve the crisis into further displays of terrorism (see Savun and Philips 2009 and Duyvesteyn

2008). In addition to the inconclusiveness of its effectiveness of combating terrorism, the military model lacks a clear framework for recognizing a terrorist enemy and for how and when the model should be applied. Rhetoric from decision makers as well as military personnel repeatedly assert that today's terrorists are indiscernible from the ordinary citizen, hiding among the crowds and in cities and villages, wearing everyday street clothes instead of uniforms, and hoping to stay hidden. Even more, once states set their sights on a perpetrator, there is no systematic way to determine whether to pursue that individual using military means, or whether, once apprehended, the individual should be detained and prosecuted in military tribunal. Because the military model allows the state to engage in symmetric violence against terrorist perpetrators, there is an assumption that military models may more easily violate civil liberties and human rights (Kielsgard 2005).

Based on how each model is conceptualized, I made several theoretical assumptions about their association with terrorism as well as relevant political processes. Since the criminal justice system views terrorism as a crime, respects democratic principles, and exercises restraint on violence, it may be expected that its repertoire of available response strategies seek to utilize the law enforcement actors and existing criminal laws and institutions, refrain from overt displays of violence, and guarantee the Constitutional liberties of all terrorist suspects. Since the military model uses the military rules of engagement, permitting the state to use force to prevent and combat terrorism, and is sensitive to fluctuations in public opinion, we might expect that terrorism increases military activity and sways public opinion in favor of increased military activity, subsequently affecting military spending. Conventional wisdom and previous research has led to the assumptions that the criminal justice model is the first line of defense in democratic states, but that it has fallen to the wayside in favor of the military model since 9/11.

The results of this dissertation have affirmed existing views of the two models, challenged others, and afforded new assumptions about the conceptualizations of the models. The quantitative research, focusing predominantly on the military model, demonstrates a significant and positive relationship between the supply of terrorism and military activity. As attacks increase in frequency and magnitude, we should expect a relative rise military activity over the next several years, above and beyond standard patterns of spending increases. This pattern exists long before the 9/11 attacks and persists well beyond it. In fact, 9/11 proved to be an insignificant predictor of military spending as related to terrorist attacks over time.

The results also demonstrate that terrorism has direct effects on public opinion, which in turn has a direct effect on military activity. As terrorist attacks increase in frequency and magnitude, so too does the call of the public for heightened security by way of military action. Specifically, terrorist attacks incentivize the general public to want to spend more on the military, and policy makers acquiesce, usually in the next budgetary cycle. This is the demonstrated indirect effect of terrorism on the military, filtered through public opinion. Though this finding stands alone as a causal predictor of future military spending, the quantitative models do not include measures for other possible predictors of military spending such as other stakeholders in counterterrorism and defense policy such as defense contractors and civil military organizations.

Perhaps the most underwhelming finding, or lack thereof, of the quantitative research was the inability to confirm whether or not increases in military activity affect future supplies of terrorism. This is the finding needed to determine the effectiveness of the military model; whether or not use of force actually decreases terrorism. The preliminary results suggest a possibility that increased military activity actually increases future supplies of terrorism, but only

contemporaneously. If this be the case, these results are consistent with Braithwaite and Li (2007), Savun and Phillips (2009), and Azam and Thelen (2010), who all find that military action, in one capacity or another, increases terrorism. However, more data is needed to statistically confirm the significance of these results as presented in the dissertation.

The qualitative analysis is able to explore the associations and implications of the criminal justice model as well as provide a narrative of the nuances between the two models of counterterrorism. The purpose of this analysis is to understand how the U.S. understands terrorism, what actors and institutions are involved in the counterterrorism process, what principles and laws guide counterterrorism practice, and how the U.S. explains and justifies the use of adopted policies. In addition, the analysis is able to provide a better image of how both the criminal justice and military models are systematized in their practice and how the two models overlap.

First, the qualitative analysis is consistent quantitative research in that it suggests that the military model has been consistently employed long before 9/11. Both analysis of practice and rhetoric display consistent patterns of employment of the tools of the military model both before and after the attacks. However, a more nuanced perspective suggests that although the general practice of military response has not changed, the specific tactic employed may have. Specifically, prior to 9/11 military responses more regularly consisted of bombings and air strikes, whereas after 9/11 the popular methods shifted to covert operations, including raids and task forces, and targeted killings.

Second, the assumption that terrorism is viewed as a crime in the criminal justice model and as an act of war in the military model also loses elements of its validity. While this proposition is still correct at its most basic understanding, discourse analysis shows that

conceptualizations of terrorism for policy decision makers is more nuanced. The model is correct to assume that criminal justice models view terrorism as a crime, but terrorist crime, specifically, is viewed as anything but ordinary. Instead terrorism has been positioned in its own class of appalling deviance, and has been routinely debated as an aggravating factor in criminal sentencing, or as its own category of criminal action (Wattad 2006). In addition, despite regular counterterrorism responses through military institutions, terrorism is not understood as an act of war until the 1990s. When President Reagan gave his speech in 1986 entitled “The Fight Against Terrorism,” informing citizens of the U.S. launching of Operation El Dorado Canyon, he referred to terrorism as “criminal behavior.”⁵⁶ The dichotomizing of the view of terrorism as crime or war is a relatively new phenomenon, first occurring with the Clinton Administration in 1993.

Third, the criminal justice model is just as likely as the military model to commit civil liberty and human rights violations. The prevailing conceptualization of the criminal justice model, and an assumption included in the theoretical framework in Chapter 3, is that it lays its foundation on the preservation of these democratic principles. If that assumption were true, we could expect that criminal justice responses would be less likely to violate these principles than military response. The qualitative results suggest that both types of response are equally likely to commit these infractions, albeit in different ways. Those committed by the military model appear to be more severe and violent in nature, while those committed by the criminal justice model more routinely include civil liberties violations and torture-light type actions.

Perhaps the most interesting of the qualitative findings is the manner in which the criminal justice and military models and tools, especially detentions and prosecution, are applied at the individual level. The theoretical frameworks of these models do not afford any

⁵⁶ The speech was given on April 14, 1986 and the transcript can be read in full at http://www.speeches-usa.com/Transcripts/ronald_reagan-terrorism.html

expectations about the characterizations of terrorists or terrorism that would receive a criminal or military response from the government. However, in practice there does appear to be some discernible patterns about how and to whom these models have been applied. First, Muslim individuals from states that are not U.S. allies are more likely to be pursued, detained, and prosecuted through military means. Second, individuals from Western and democratic states or from states that are allies of the U.S. are more likely to be pursued, detain, and prosecuted using the criminal justice system. However, there is one exception, any individual thought to be in affiliation with Islamist extremist groups is almost always pursued through military means, and this proves to be true throughout the temporal range of the study.

What, then, are the takeaways from this study? First, the criminal justice and military models of counterterrorism are often presented as two separate and distinct conceptualizations of counterterrorism strategy. In reality, the two overlap more than they are separate. Many examples show individuals that are pursued by special operations forces and handed over to law enforcement agencies for civil-criminal detentions and trials. Other examples include individuals who are detained and tried in military commissions but later appeal to the Supreme Court and are sentenced to civil-criminal punishments.

Second, we must consider the implications of the finding that the criminal justice model is no less likely to commit civil liberty and human rights violations than the military model. This premise holds in the existing literature as one of the main reasons democracies turn to the criminal justice system to prosecute terrorism as opposed to disproportionate displays of force and violence to eradicate their opponent. If criminal justice tactics are indeed just as likely to violate democratic principles and if terrorists really are not deterred by punishment, then what reason do democracies have to continue to seek them as a primary response strategy? Until we

have more data about the effectiveness of criminal institutions in combatting terrorism, the continued use of the criminal justice model of counterterrorism rests solely on the proposition that it maintains lower utility costs than other response types because it works through existing institutions.

Third, both models of counterterrorism seem to arbitrarily discriminate against Muslims and predominantly Muslim states, save a few U.S. allies. This may come as little surprise given recent crusades abroad against Islamist radicalism and extremism in the 2000s and 2010s, but qualitative data suggests that Muslim U.S. citizens are also disproportionately treated with military responses. This exposes an institutional and systematic bias against Muslim individuals and states, guilty or innocent of terrorism crimes, and contributes to the dangerous narrative that conflates Islam and terrorism. Effectively, these results demonstrate that the U.S. systemically treats suspected terrorists affiliated with Islam as more dangerous, when in fact, statistical research suggests that it is not ideology, but organizational structure that makes groups more or less deadly (Piazza 2009). Focusing most of our efforts on one type of ideological terrorism may distract us from thwarting the next biggest opponent.

Fourth, military measures of counterterrorism have direct effects on political processes at home. Specifically, those tested in the dissertation include actual spending, which has a correlation to the budgetary process itself, and public opinion, signaling and policy adoption. These political effects, which rarely receive due consideration, especially in the case of the military model, have real impacts on domestic political outcomes (Omelycheva 2010). Terrorism alters the rhetoric of policy decision makers and encourages the general public to support the state in more forceful counterterrorism strategies. At the same time, however, terrorism and military response might exist in a spiral model context in which terrorism occurs, eliciting direct

military action, contemporaneously inciting more terrorism. This challenges earlier International Relations literature, as well as current counterterrorism practices, which suggest that conventional military force is an effective political response to terrorism (Eppright 1997; Kruglanski, Crenshaw, Post, and Victoroff 2007).

Finally, the nature of terrorism is changing, more rapidly so in the last few decades, yet our understanding of terrorism, its actors, actions, and goals, as well as our methods used to combat terrorism, save targeted killings, have hardly evolved. The general tenets of the definition of terrorism have remained the same since the beginning of the temporal range of this study as have the general tactics used to combat it, despite the fact that terrorists have new motives, new operational capacities, new organizational structures, new tactics, new bargaining and recruitment strategies, and new access to technology and media. Governments must learn not only to adapt to the changing face of terrorism, but must be able to anticipate these changes for there to be any hope of beating them before they strike.

This dissertation situates itself firmly in the existing counterterrorism literature, but spans multiple disciplines. It draws on the research of political science, criminology, and public law to present a more complete image of the nature of terrorism and counterterrorism both conceptually and in practice in the case of the U.S. It set out to answer the question of how governments respond to terrorism, how they choose which strategies to employ, and how these strategies affect other political phenomena.

In the future, the theoretical framework for the criminal justice and military models of counterterrorism can be applied to cross-national studies, especially to Western style democracies. Though the empirical analysis may need to be augmented to included relevant domestic indicators and processes, both the general methodologies of the quantitative and

qualitative research in this dissertation may be expanded to examine counterterrorism practices in other states. In addition, the findings suggest more research needs to be done in the vein of modeling the interaction between terrorism and government response with respect to the actual possibilities of outcomes.

This dissertation has shown that governments have many arsenals from which they may draw to design counterterrorism policies. Although, these toolkits may be conceptualized in many ways, there are certain advantages, and disadvantages, to thinking about them in terms of criminal justice and military components as laid out in the preceding paragraphs. Within each conceptualization exists an array of actors, with many specific procedures, policies, and guidelines that help them choose from the plethora of tactics available, and they may choose one tactic or model over the other based on the type or location of the attack, the citizenship of the perpetrator, or even the utility costs of implementing a long and short range strategies. No matter the choice, the counterterrorism methods used have real implications for domestic political processes and social phenomena, which should also come into consideration when choosing a response strategy. In addition, the nature of terrorism is evolving and the false dichotomy of criminal justice versus military response may force states into dichotomized counterterrorism policies that are not making real progress in the prevention and eradication of terrorism. The jury is still out on whether or not counterterrorism strategies are successful in the overarching goal of combatting the broad scope of terrorism, but further collection of data and expansion of this study into a cross-national one may afford more insight into how effective the criminal justice and military models are at preventing transnational terrorism.

References

- Abadie, Alberto. (2006). Poverty, political freedom, and the roots of terrorism. *The Economics of National Security*, 96(2), 50-56.
- Abrahms, Max. (2008). What terrorists really want: Terrorist motives and counterterrorism strategy. *International Security*, 32(4), 78-105.
- Abu-Bader, Suleiman & Abu-Qarn, Aamer. (2003). Government expenditures, military spending and economic growth: causality evidence from Egypt, Israel, and Syria. *Journal of Policy Modeling*, 25(6), 567-583.
- Agnew, Robert. (2010). A general strain theory of terrorism. *Theoretical Criminology*, 14(2), 131-153.
- Alexander, Yonah & Latter, R. (1990). *Terrorism and the media: Dilemmas for government, journalists, and the public*. Riverside, N.J.: Macmillan Publishing.
- Alexander, Yonah. (2002). *Combating terrorism: Strategies of ten countries*. Ann Arbor: University of Michigan Press.
- Allen, William J. (1992). Crisis in Southern Iraq: Operation Southern Watch. *DTIC: United States Air Force*.
- Anderson, James B. (2004). Hamdi v. Rumsfeld: judicious balancing at the intersection of the executive's power to detain and the citizen-detainee's right to due process. *Journal of Criminal Law & Criminology*, 95(3), 689-724.
- Arce M., Daniel G. & Sandler, Todd. (2005). Counterterrorism: A game theoretic analysis. *Journal of Conflict Resolution*, 49(2), 183-200.
- Arrigo, Jean Maria. (2004). A utilitarian argument against torture interrogations of terrorists. *Science and Engineering Ethics*, 10(3), 1-30.
- Aslam, Wali. (2013). *The United States and great power responsibility in international society: Drones, rendition, and invasion*. New York: Routledge.
- Atkinson, Scott, Sandler, Todd, & Tschirhart, John. (1987). Terrorism in a bargaining framework. *Journal of Law and Economics*, 30(1), 1-21.
- Azam, Jean-Paul & Thelen, Veronique. (2010). Foreign aid versus military intervention in the war on terror. *Journal of Conflict Resolution*, 54(2), 237-261.
- Badey, Thomas J. (1998). Defining international terrorism: A pragmatic approach. *Terrorism and Political Violence*, 10(1), 90-107.

Banks, William, de Nevers, Renee, & Wallerstein, Mitchell B. 2008. *Combatting terrorism: Strategies and Approaches*. Washington DC: CQ Press.

Bapat, Navin. (2006). State bargaining with transnational terrorist groups. *International Studies Quarterly*, 50(1), 213-230.

Bapat, Navin. (2011). Transnational terrorism, US military aid, and the incentive to misrepresent. *Journal of Peace Research*, 48(3), 303-318.

Bapat, Navin. (2012). Understanding state sponsorship of militant groups. *British Journal of Political Science*, 42(1), 1-29.

Barron, James. (2003, September 17). After 1920 blast, the opposite of 'Never forget'; No memorials on Wall St. for attack that killed 30. *The New York Times*. Retrieved from <http://www.nytimes.com/2003/09/17/nyregion/after-1920-blast-opposite-never-forget-no-memorials-wall-st-for-attack-that.html>

Bartels, Larry M. (1994). The American public's defense spending preferences in the post-cold war era. *Public Opinion Quarterly*, 58(4), 479-508.

Bassiouni, M. Cherif. (2006). The Institutionalization of Torture Under the Bush Administration. *Case W. Res. Journal of International Law*, (37)2, 389-425.

Bayley, David H., & Weisburd, David. (2011). The Role of the Police in Counterterrorism. In Weisburd, D., Feucht, T., Hakimi, I., Mock, L. & Perry, S. (Eds). *To Protect and Serve: Policing in an Age of Terrorism*.

Bean, Lauren. (2007). Due Process and Terrorism. Report from the *American Bar Association Standing Committee on Law and National Security*, presented at the National Strategy Forum. Retrieved from http://www.americanbar.org/content/dam/aba/migrated/natsecurity/Due_Process_and_Terrorism_Dec_2007.authcheckdam.pdf

Bearak, Barry. (1998, August 23). After the attacks: in Pakistan; Estimates of toll in Afghan missile strike reach as high as 50. *The New York Times*. Retrieved from <http://www.nytimes.com/1998/08/23/world/after-attacks-pakistan-estimates-toll-afghan-missile-strike-reach-high-50.html>

Beard, Jack M. (2007). The Geneva boomerang: The Military Commissions Act of 2006 and U.S. counterterror operations. *The American Journal of International Law*, 101, 56-73.

Bedau, Hugo Adam. (1997). *The death penalty in America: Current controversies*. New York: Oxford University Press.

- Behm, Allan & Palmer, Michael. (1991). Coordinating counterterrorism: A strategic approach to a changing threat. *Terrorism* 14(1): 171-193.
- Benjamin, Daniel. (2010, September 8). U.S. Counterterrorism strategy in Yemen.” *U.S. Insitute of Peace; U.S. Department of State*. Retrieved from <https://2009-2017.state.gov/j/ct/rls/rm/2010/147296.htm>
- Benmelech, Efraim & Berrebi, Claude. (2006). Attack Assignments in Terror Organizations and the Productivity of Suicide Bombers. Harvard University Typescript. Retrieved from <http://www.nber.org/papers/w12910>
- Bhounik, Arunabha. (2004). Democratic responses to terrorism: A comparative study of the United States, Israel, and India. *Denver Journal of International Law*, 33, 285-345.
- Bhounik, Arunabha. (2005). Democratic responses to terrorism: A comparative study of the United States, Israel, and India. *Denver Journal of International Law and Policy*, 33(2), 285-304.
- Birkland, Thomas A. (2006). *Lessons of disaster: Policy change after catastrophic events*. Washington DC: Georgetown University Press.
- Biswas, B. and Ram, R. (1986). Military expenditures and economic growth in less developed countries: An augmented model and further evidence. *Economic Development and Cultural Change*, 34, 362-371.
- Black, D.(2002). Terrorism as social control. *American Sociological Association: Crime, Law, and Deviance Newsletter: Spring*: 3-5.
- Bohn, M. K. (2004). *The Achille Lauro hijacking: lessons in the politics and prejudice of terrorism*. Washington, D.C.: Potomac Books, Inc..
- Boyle, Michael J. (2008). The war on terror in American grand strategy. *International Affairs*, 84(2), 191-209.
- Boyle, Michael J. (2010). Do counterterrorism and counterinsurgency go together? *International Affairs*, 86(2), 333-353.
- Bradley, Curtis. (2007). The Military Commissions Act, habeas corpus, and the Geneva Conventions. *The American Journal of International Law*, 101, 2-23.
- Braithwaite, Alexander & Li, Quan. (2007). Transnational terrorism hot spots: Identification and impact evaluation. *Conflict Management and Peace Science*, 24(4), 281-296.
- Brandt, Patrick T. & Williams, John T. (2006). *Multiple time series models*. Thousand Oaks, CA: Sage Publications.

- Brauer, Jorgen & Hartley, Keith. (2013). *The Economics of Regional Security: NATO, the Mediterranean and Southern Africa*. Routledge.
- Breitung, Jorg & Pesaran, M. Hashem. (2008). Unit Roots and Cointegration in Panels.” In, Matyas, Laszlo & Sevestre, Patrick (Eds.). *The econometrics of panel data: Fundamentals and recent developments in theory and practice*. Berlin: Springer.
- Brooks, R. E. (2004). War everywhere: rights, national security law, and the law of armed conflict in the age of terror. *University of Pennsylvania Law Review*, 153(2), 675-761.
- Buckley, Mary & Fawn, Rick. (2003). *Global Responses to Terrorism: 9/11, Afghanistan and beyond*. New York: Routledge.
- Bueno de Mesquita, Bruce. (2005). Conciliation, counterterrorism, and patterns of terrorism violence. *International Organization*, 59(1), 145-176.
- Bueno de Mesquita, Ethan. (2005). The Quality of Terror. *American Journal of Political Science*, 49(3), 515–530.
- Burstein, Paul. (2003). The impact of public opinion on public policy: A review and an agenda. *Political Research Quarterly*, 56(1), 29-40.
- Byers, Michael. (2002). Terrorism, the use of force, and international law after 11 September. *International Relations*, 16(2), 155-170.
- Carey, James. (1995). The press, public opinion, and public discourse. In Lewis, Theodore & Salmon, Charles (Eds.). *Public opinion and the communication of consent*, 373-402.
- Cassese, Antonio. (2001). Terrorism is also disrupting some crucial legal categories of international law. *European Journal of International Law*, 12(5), 993-1001.
- Chalk, Peter. (1998). The response to terrorism as a threat to liberal democracy. *Australian Journal of Politics and History*, 44(3), 373-388.
- Chesney, Robert. (2006). Beyond conspiracy: Anticipatory prosecution and the challenge of unaffiliated terrorism. *Southern California Law Review*, 80, 425.
- Chandra, R. (2003). *Global Terrorism: Potentials of world terrorism* (Vol. 1). India: Gyan Publishing House.
- Chertoff, Michael. (2011). 9/11: Before and after. *Homeland Security Affairs* 7.
- Chesney, Robert, & Goldsmith, Jack. (2008). Terrorism and the convergence of the criminal and military detention models. *Stanford Law Review*, 60(4), 1079- 1134.

- Choi, Seung-Whan. (2010). Fighting Terrorism through Rule of Law? *Journal of Conflict Resolution*, 54(6), 940-966.
- Choi, Seung-Whan & Piazza, James A. (2016). Foreign military interventions and suicide attacks. *Journal of Conflict Resolution*, forthcoming 2016, doi: 10.1177/0022002715576575.
- Claridge, David. (1996). State terrorism? Applying a definitional model. *Terrorism and Political Violence*, 8(3), 47-63.
- Clutterbuck, Lindsay. (2004). Law Enforcement. In Cronin, Audrey & Ludes, James (Eds.). *Attacking Terrorism: Elements of a Grand Strategy*. Washington DC: Georgetown University Press.
- Cochrane, John H. (1991). A critique of the application of unit root tests. *Journal of Economic Dynamics and Control*, 15, 275-284.
- Cohen, Aviv. (2012). Prosecuting terrorists at the International Criminal Court: Reevaluating an unused legal tool to combat terrorism. *Michigan State International Law Review*, 20(2), 219-257.
- Cole, David & Dempsey, Jack X. (2006). *Terrorism and the Constitution: Sacrificing civil liberties in the name of national security*. New York: The New Press.
- Collins, S.D. (2004). Dissuading State Support of Terrorism: Strikes or Sanctions? An Analysis of Dissuasion Measures Employed Against Libya. *Studies in Conflict and Terrorism*, 27(1), 1–18.
- Comey, James. (2005). Fighting terrorism and preserving civil liberties. *University of Richmond Law Review*, 40, 403.
- Converse, Philip. E. (1987). Changing conceptions of public opinion in the political process. *The Public Opinion Quarterly*, 51, S12-S24.
- Conway, Maura. (2017). Determining the role of the internet in violent extremism and terrorism: Six suggestions for progressing research. *Studies in Conflict and Terrorism*, 40(1), 77-98.
- Coppedge, Michael. (2002). Theory building and hypothesis testing: Large- vs. small-N research on democratization. In preparation for *Annual Meeting of the Midwest Political Science Association*. Retrieved from <http://www3.nd.edu/~mcoppedg/crd/mpsacopp02.pdf>
- Crelinsten, R. D. (1989a). Images of terrorism in the media: 1966–1985. *Studies in Conflict & Terrorism*, 12(3), 167-198.
- Crelinsten, Ronald D. (1989b). Terrorism, counter-terrorism and democracy: The assessment of national security threats. *Terrorism and Political Violence*, 1(2), 242-269.

- Crelinsten, Ronald D. (1998). The discourse and practice of counterterrorism in liberal democracies: The assessment of national security threats. *Australian Journal of Politics and History*, 44(1), 389-413.
- Crelinsten, Ronald D. (2002). Analysing terrorism and counter-terrorism: A communication model. *Terrorism and Political Violence*, 14(2), 77-122.
- Crelinsten, Ronald P. (2009). *Counterterrorism*. Cambridge, UK: Polity Press.
- Crelinsten, Ronald D. (2014). Perspectives on counterterrorism: From stovepipes to a comprehensive approach. *Perspectives on Counterterrorism*, 8(1).
- Crelinsten, Ronald P. & Schmid, Alex. (1992). Western responses to terrorism: A twenty-five year balance sheet. *Terrorism and Political Violence*, 4(4), 307-340.
- Crenshaw, Martha. (1983). *Terrorism, legitimacy, and power: The consequences of political violence*. Middletown: Wesleyan University Press.
- Crenshaw, Martha. (1987). Theories of terrorism: Instrumental and organizational approaches. *Journal of Strategic Studies*, 10(4), 13-31.
- Crenshaw, Martha. (2001). Counterterrorism policy and the political process. *Studies in Conflict and Terrorism*, 24(5), 329-337.
- Crenshaw, Martha. (2007). The Logic of terrorism: Terrorist behavior as a product of strategic choice. In Mahan, Sue & Griset, Pamala (Eds.). *Terrorism in Perspective*. Thousand Oaks, CA: Sage, 24-34.
- Crona, Spencer & Richardson, Neal. (1996). Justice for war criminals of invisible armies: A new legal and military approach to terrorism. *Oklahoma City University Law Review*, 21(2), 349-407.
- Cusack, Thomas R. & Ward, Michael Don. (1981). Military Spending in the United States, Soviet Union, and the People's Republic of China. *Journal of Conflict Resolution*, 25(3), 429-469.
- Darmer, M.K.B. (2003). Beyond Bin Laden and Lindh: Confessions law in an age of terrorism. *Cornell Journal of Law and Public Policy*, 12(2), 319-372.
- Das, Ramesh, Dinda, Soumyananda, & Ray, Kamal. (2015). Causal link between military expenditure and GDP-A study of selected countries. *International Journal of Development and Conflict*, 5(2), 114-126.
- De Boef, Suzanna & Keele, Luke. (2008). Taking time seriously. *American Journal of Political Science*, 52(1), 184-200.
- Defense Intelligence Agency, Official. <http://www.dia.mil/About/>.

- Deflem, Mathieu. (2004). Social control and the policing of terrorism: Foundations for a sociology of counterterrorism. *The American Sociologist*, 35(2), 75-92.
- Deflem, Mathieu. (2006). Global rule of law or global rule of law enforcement? International police cooperation and counterterrorism. *The Annals of the American Academy of Political and Social Science*, 603(1), 240-251.
- Delucchi, Mark A. & Murphy, James J. (2008) U.S. military expenditures to protect the use of Persian Gulf oil for motor vehicles. *Energy Policy*, 36, 2253-2264.
- Department of Justice. (2009, June 9). Fact sheet: Prosecuting and detaining terror suspects in the U.S. criminal justice system. Retrieved from <https://www.justice.gov/opa/pr/fact-sheet-prosecuting-and-detaining-terror-suspects-us-criminal-justice-system>
- Dickey, D.A., Bell, W.R., & Miller, R.B. (1986). Unit roots series model: Tests and implications. *American Statistician*, 40, 12-26.
- Dickinson, Laura T. (2002). Using legal process to fight terrorism: Detentions, military commissions, international tribunals, and the rule of law. *S. Cal. Law Review*, 75, 1407-1492.
- Dragu, Tiberiu. (2011). Is there a tradeoff between security and liberty? Executive bias, privacy, protections, and terrorism prevention. *American Political Science Review*, 105(1), 64-78.
- Dripps, D. A. (2003). Terror and Tolerance: Criminal Justice for the New Age of Anxiety. *Ohio State Journal of Criminal Law*, 1, 9.
- Duyvesteyn, Isabelle. (2008). Great expectations: the use of armed force to combat terrorism. *Small Wars & Insurgencies*, 19(3), 328-351.
- Eckert, Sue. (2005). Protecting critical infrastructure: The role of the private sector. In P. Dombrowski (Ed.). *Guns and butter: the political economy of international security*. Boulder: Lynne Rienner Publishers.
- Eckstein, Zvi & Tsiddon, Daniel. (2004). Macroeconomic consequences of terror: theory and the case of Israel. *Journal of Monetary Economics*, 51(5), 971-1002.
- Eggen, Dan. (2003, April 17). Palestinian demands that U.S. release Abbas are rejected; Klinghoffer family applauds capture of chief plotter of cruise ship hijacking. *The Washington Post*. Retrieved from <https://www.highbeam.com/doc/1P2-256070.html>
- Elsea, Jennifer. (2007). Treatment of “battlefield detainees” in the War on Terrorism. *Congression Research Service*. Retrieved from <https://fas.org/sgp/crs/terror/RL31367.pdf>
- Enders, Walter. (2015). *Applied Econometric Time Series*. Hoboken: John Wiley and Sons, Inc.

- Enders, Walter & Hoover, Gary. (2012). The nonlinear relationship between terrorism and poverty. *The American Economic Review*, 102(3), 267-272.
- Enders, Walter, Sachsida, Adolfo, & Sandler, Todd. (2006). The impact of transnational terrorism on US foreign direct investment. *Political Research Quarterly*, 59(4), 517-531.
- Enders, Walter & Sandler, Todd. (1993). The Effectiveness of Antiterrorism Policies: A Vector-Autoregression-Intervention Analysis. *American Political Science Review*, 87(4), 829-844.
- Enders, Walter & Sandler, Todd. (2000). Is transnational terrorism becoming more threatening? A time-series investigation. *Journal of Conflict Resolution*, 44(3), 307-332.
- Enders, Walter, Sandler, Todd, & Gaibullov, Khusrav. (2011). Domestic versus Transnational Terrorism: Data, Decomposition, and Dynamics. *Journal of Peace Research*, 48(3), 319-337.
- Entman, Robert M. (2003). Cascading activation: Contesting the White House's frame after 9/11. *Political Communication*, 20(4), 415-432.
- Eppright, Charles T. (1997). Counterterrorism and conventional military force: The relationship between political effect and utility. *Studies in Conflict and Terrorism*, 20(4), 333-344.
- Erbay, Tayfun. (2012). The role of the military in counterterrorism: Unintended consequences. *DTIC: Naval Postgraduate School*.
- Erickson, Richard J. (1989). *Legitimate use of military force against state-sponsored international terrorism*. Alabama: Air University Press.
- Fearon, James D. (1995). Rationalist explanations for war. *International Organizations*, 49(3), 379-414.
- Feridun, Mete, & Shahbaz, Muhammad. (2010). Fighting terrorism: are military measures effective? Empirical evidence from Turkey. *Defence and Peace Economics*, 21(2), 193-205.
- Fernandez, Luciana M. (2009). Organized crime and terrorism: From the cells towards political communication, a case study. *Terrorism and Political Violence*, (21)4, 595-616.
- Finn, John E. (2010). Counterterrorism regime and the rule of law: The effects of emergency legislation on separation of powers, civil liberties, and other fundamental constitutional norms. In Crenshaw, Martha (Ed.). *The Consequences of Counterterrorism*. New York: Russell Sage, 33-93.
- Fisher, Miles P. (2006). Applicability of the Geneva Conventions to "armed conflict" in the War on Terror. *Fordham International Law Journal* 30(3): 509-534.
- Freeman, John R., Williams, John T, & Lin, Tse-min. (1989). Vector autoregression and the study of politics. *American Journal of Political Science*, 842-877.

- Fried, Joseph P. (1996). Sheik sentenced to life in prison in bombing plot. *The New York Times*. Retrieved from <http://www.nytimes.com/1996/01/18/nyregion/sheik-sentenced-to-life-in-prison-in-bombing-plot.html>
- Friedersdorf, Conor. (2016, December 23). Obama's weak defense of his record on drone killings. *The Atlantic*. Retrieved from <https://www.theatlantic.com/politics/archive/2016/12/president-obamas-weak-defense-of-his-record-on-drone-strikes/511454/>
- Fuchs, Andrew J. (2001). The effect of Apprendi v. New Jersey on the federal sentencing guidelines: Blurring the distinction between sentencing facts and elements of a crime. *Fordham Law Review*, 69(4), 1399-1438.
- Gelso, C. (2006). Applying theories to research: The interplay of theory and research in science. In Leong, F.T. & Austin, J.T. (Eds.). *The psychology research handbook*. Thousand Oaks, CA: Sage.
- Gibbs, Jack P. (1989). Conceptualizations of terrorism. *American Sociological Review*, 54(3), 329-340.
- Glaberson, William. (2008, November 3). Detainee Convicted on Terrorism Charges. *The New York Times*. Retrieved from <http://www.nytimes.com/2008/11/04/washington/04gitmo.html>
- Gleditsch, Nils, Wallensteen, Peter, Eriksson, Mikael, Sollenberg, Margareta, & Strand, Harvard. (2002). Armed Conflict 1946-2001: A new dataset. *Journal of Peace Research*, 39(5), 615-637.
- Goldsmith, Jack. (2010, October 11). Don't try terrorists, lock them up. *The New York Times*. Retrieved from <http://www.nytimes.com/2010/10/09/opinion/09goldsmith.html>
- Goodman, Ryan & Jinks, Derek. (2004). International law, US war powers, and the Global War on Terrorism. *Harvard Law Review*, 118, 2653.
- Gouvin, Eric J. (2003). Bringing out the big guns: the USA patriot act, money laundering, and the war on terrorism. *Baylor Law Review*, 55, 955-990.
- Gray, Jacqueline M. & Wilson, Margaret. (2006). Understanding the 'War on Terrorism': responses to 11 September 2001. *Journal of Peace Research*, 43(1), 23-36.
- Gross, Emanuel. (2005). Combating Terrorism: Does Self-Defense Include the Security Barrier - The Answer Depends on Who You Ask, *Cornell International Law Journal*, 38(2:7), 569-582.
- Groves, Robert M. & Peytcheva, Emilia. (2008). The impact of nonresponse rates on nonresponse bias a meta-analysis. *Public opinion quarterly*, 72(2), 167-189.

- Gupta, Sanjeev, Clements, B., Bhattacharya, Rina, & Chakravarti, S. (2004). Fiscal consequences of armed conflict and terrorism in low-and middle-income countries. *European Journal of Political Economy*, 20(2), 403-421.
- Hahn, Jinyong & Kuersteiner, Guido. (2002). Asymptotically unbiased inference for a dynamic panel model with fixed effects when both n and T are large. *Econometrica*, 70(4), 1639-1657.
- Hamilton, J. D.(1994). *Time series analysis* (Vol. 2). Princeton: Princeton university press.
- Harper, Tim. (2003, December 8). U.S. 'big broom' swept up many innocents; thousands picked up as terror suspects after 9/11 were never charged. *Toronto Star*, p. A10.
- Hartley, Keith & Russett, Bruce. (1992). Public opinion and the common defense: who governs military spending in the United States? *American Political Science Review*, 86(4), 905-915.
- Hartley, Keith & Sandler, Todd. (1995). *The handbook of defense economics: Volume I*. Amsterdam: Elsevier Science B.V.
- Higgs, Robert & Kilduff, Anthony. (1993). Public opinion: A powerful predictor of US defense spending. *Defence and Peace Economics*, 4(3), 227-238.
- Hoover, Kevin D. (2001). *Causality in macroeconomics*. New York: Cambridge University Press.
- Hutchison, Allan. (1987). Democracy and rule of law. In Hutchison, Allan & Monahan, Patrick (Eds.). *The rule of law: ideal or ideology*. Toronto: Carswell.
- Jackson, B. A. (2001). Technology acquisition by terrorist groups: threat assessment informed by lessons from private sector technology adoption. *Studies in Conflict and Terrorism*, 24(3), 183-213.
- Jackson, R. (2009). The study of terrorism after 11 September, 2001: Problems, challenges, and future developments. *Political Studies Review*, 7(2), 171-184.
- Jarvis, Lee, & Macdonald, Stuart. (2015). What is cyberterrorism? Findings from a survey of researchers. *Terrorism and Political Violence*, 27(4), 657-678.
- Jorgensen, Marianne & Phillips, Louise. (2002). *Discourse analysis as theory and method*. London: Sage Publications.
- Kaplan, Eben. (2006, January 25). Q&A: Targeted killings. *The New York Times*. Retrieved from http://www.nytimes.com/cfr/international/slot3_012506.html?pagewanted=print&_r=0
- Kearns, Erin, Conlon, Brendan, & Young, Joseph. (2014). Lying about terrorism. *Studies in Conflict and Terrorism*, 37(5), 422-439.

- Khalili, Laleh. (2013). *Time in the shadows: Confinement in counterinsurgencies*. Stanford: Stanford University Press.
- Kielsgard, Mark. (2005). A human rights approach to counterterrorism. *California Western International Law Journal*, 36, 249-302.
- King, Gary. (2001). Proper Nouns and Methodological Propriety: Pooling Dyads in International Relations Data. *International Organization*, 55(2), 497-507.
- Knight, Malcolm, Loayza, Norman, & Villanueva, Delano. (1996). The peace dividend: Military spending cuts and economic growth. *International Monetary Fund Staff Papers*, 43(1), 1-37.
- Knopf, Jeffrey W. (1998). How rational is “the rational public”? Evidence from US public opinion on military spending. *Journal of Conflict Resolution*, 42(5), 544-571.
- Kosnik, Mark E. (2000). The military response to terrorism. *The Naval War College Review*, 53(2), 13-39.
- Krippendorff, Klaus. (1980). *Content analysis: An introduction to its methodology*. Beverly Hills: Sage Publications.
- Kroenig, Matthew & Pavel, Barry. (2012). How to deter terrorism. *The Washington Quarterly*, 35(2), 21-36.
- Kruglanski, Arie W., Crenshaw, Martha, Post, Jerrald, & Victoroff, Jeff. (2007). What should this fight be called? Metaphors of counterterrorism and their implications. *Psychological Science in the Public Interest*, 8(3), 97-133.
- Kurrid-Klitgaard, Peter, Justesen, Moegens K., & Klemmesen, Robert. (2006). The political economy of freedom, democracy, and transnational terrorism. *Public Choice*, 128, 289-315.
- Kydd, Andrew & Walter, Barbara F. (2006). The strategies of terrorism. *International Security*, 31(1), 49-80.
- Ladd, J. M. (2007). Predispositions and public support for the president during the war on terrorism. *Public Opinion Quarterly*, 71(4), 511-538.
- LaFree, Gary. (2010). The Global Terrorism Database: Accomplishments and challenges. *Perspectives on Terrorism*, (4)1.
- LaFree, Gary, Dugan, Laura, & Miller, Erin. (2015). *Putting terrorism in context: Lessons from the Global Terrorism Database*. New York: Routledge.
- LaFree, Gary, & Hendrickson, James. (2007). Build a criminal justice policy for terrorism. *Criminology and Public Policy*, 6(4), 781-790.

Lake, David. (2002). Rational extremism: Understanding terrorism in the twenty-first century. *Dialog-International Organization*, 1(1), 15-29.

Laqueur, Walter. (1996). Postmodern Terrorism. *Foreign Affairs*, 75(5), 24-37.

Lee, Stephen P. (2007). *Intervention, terrorism, and torture: Contemporary challenges to Just War Theory*. Dordrecht, Netherlands: Springer Publications.

Lewis, Carol W. (2005). The clash between security and liberty in the US response to terror. *Public Administration Review*, 65(1), 18-30.

Lobel, Jules. (1999). The use of force to respond to terrorist attacks: The bombing of Sudan and Afghanistan. *Yale Journal of International Law*, 24(2), 537-557.

Lubasch, Arnold. (1992, August 14). U.S. indicts Colombians in '89 deaths. *The New York Times*. Retrieved from <http://www.nytimes.com/1992/08/14/nyregion/us-indicts-colombians-in-89-deaths.html>

Lutz, James & Lutz, Brenda. (2005). *Terrorism: Origins and evolution*. New York: Palgrave Macmillan.

Macken, Claire. (2011). *Counterterrorism and the detention of suspected terrorists: preventive detention and International Human Rights Law*. New York: Routledge.

Mahoney, James & Rueschemeyer, Dietrich. (2003). *Comparative historical analysis in the social sciences*. New York: Cambridge University Press.

Marks, Stephen P. (2006). International law and the 'War on Terrorism': Post 9/11 responses by the United States and Asia Pacific Countries. *Asia Pacific Law Review*, (14)1, 43-74.

Marrazzo, Robert. (2001). The strategic failure of Operation Southern Watch and the need for a new coalition based strategy. *DTIC: Naval War College*.

Martin, Thomas C. (1996). The Comprehensive Terrorism Prevention Act of 1995. *Seton Hall Legislative Journal*, 20(2), 201-247.

Martinez, Jenny S. (2004). Hamdi V. Rumsfeld. 124 S. Ct. 2633. *American Journal of International Law*, 98(4), 782-788.

Mayerfield, Jamie. (2007). Playing by our own rules: How U.S. marginalization of international human rights law led to torture. *Harvard Human Rights Journal*, (20), 89-140.

McCauley, Clark. (2006). 'Jujitsu politics: Terrorism and response to terrorism. In Kimmel, Paul R. & Stout, Chris E. (Eds.). *Collateral Damage: The Psychological Consequences of America's War on Terrorism*. Westport, CT: Praeger, 45-65.

- McCauley, Clark, & Moskalenko, Sophia. (2008). Mechanisms of political radicalization: Pathways toward terrorism. *Terrorism and Political Violence*, 20(3), 415-433.
- McCracken, Trevor. (2011). Ten years on: Obama's war on terrorism in rhetoric and practice. *International Affairs*, 87(4), 781-801.
- McCulloch, Jude & Pickering, Sharon. (2009). Pre-crime and counterterrorism: Imagining future crime in the 'War on Terror.' *British Journal of Criminology*, 49, 628-645.
- McFadden, Robert. 1993, December 3. Head of Medellin cocaine cartel is killed by troops in Colombia. *The New York Times*. Retrieved from <http://www.nytimes.com/1993/12/03/world/head-of-medellin-cocaine-cartel-is-killed-by-troops-in-colombia.html?pagewanted=all>
- Merari, Ariel. (1993). Terrorism as a strategy of insurgency. *Terrorism and political violence*, 5(4), 213-251.
- Millen, Raymond A., & Metz, Steven. (2004). *Insurgency and counterinsurgency in the 21st century: reconceptualizing threat and response*. Strategic Studies Institute: U.S. Army War College.
- Miller, Seumas. (2009). *Terrorism and Counterterrorism: Ethics and liberal democracy*. Oxford, U.K.: Blackwell Publishing.
- Morag, Nadav. (2011). *Comparative Homeland Security: Global Lessons*. Hoboken, New Jersey: Wiley-Blackwell.
- Murdoch, James C. & Sandler, Todd. (1984). Complementarity, free riding, and the military expenditures of NATO allies. *Journal of public economics*, 25(1-2), 83-101.
- Murphy, John F. (2009). Challenges of the new terrorism. In Armstrong, David (Ed.). *Routledge handbook of international law*. New York: Routledge, 281-293.
- Murphy, Sean D. (2006). Evolving Geneva Convention paradigms in the 'War on Terrorism': Applying the core rules to the release of persons deemed 'unprivileged combatants.' *George Washington Law Review*, 75, 1105.
- Myers, Stephen Lee. (1998, August 24). U.S. offers more details on attack in Sudan. *The New York Times*. Retrieved from <http://www.nytimes.com/1998/08/24/world/after-the-attacks-the-overview-us-offers-more-details-on-attack-in-the-sudan.html>
- Mythen, G., & Walklate, S. (2005). Criminology and terrorism. *British journal of criminology*, 46, 379-398.

- Nacos, Brigitte L. (1994). *Terrorism and the media: From the Iran hostage crisis to the Oklahoma City bombing*. New York: Columbia University Press.
- Nacos, Brigitte L. (2003). The terrorist calculus behind 9-11: A model for future terrorism? *Studies in Conflict and Terrorism*, 26(1), 1-16.
- Nacos, Brigitte L., Bloch-Elkon, Yaeli, & Shapiro, Robert. (2007). Post-9/11 terrorist threats, news coverage, and public perceptions in the United States. *International Journal of Conflict and Violence*, 1(2), 105-126.
- Nagl, J. A., Amos, J.F., Sewall, S., & Petraeus, David H. (2008). *The US Army/Marine Corps Counterinsurgency Field Manual*. Chicago: University of Chicago Press.
- National Security Decision Directive, no. 207. (1986, January 20). "The National Program for Combatting Terrorism." Retrieved from <http://nsarchive.gwu.edu/NSAEBB/NSAEBB55/nsdd207.pdf>
- Neuman, G. L. (2004). Comment, counterterrorist operations, and the rule of law. *European Journal of International Law*, 15 (5), 1019-1029.
- Newman, Maria. (2010, June 27). Victim of hate crime calls high court ruling a 'slap in the face.' *The New York Times*. Retrieved from <http://www.nytimes.com/2000/06/27/nyregion/victim-of-hate-crime-calls-high-court-ruling-a-slap-in-the-face.html>
- Newnham, Randall. (2008). Coalition of the bribed and bullied? U.S. economic linkage and the Iraq War coalition. *International Studies Perspectives*, 9(2), 183-200.
- Newsweek Staff. (1998, August 30). Our target was terror. *Newsweek*. Retrieved from <http://www.newsweek.com/our-target-was-terror-169580>
- Nincic, Miroslav & Cusack, Thomas R. (1979). The political economy of U.S. Military Spending. *Journal of Peace Research*, 16(2), 101-115.
- Norman, Joshua. (2013, February 26). The 1993 World Trade Center bombers: Where are they now? *CBS News*. Retrieved from <http://www.cbsnews.com/news/the-1993-world-trade-center-bombers-where-are-they-now/>
- Omelycheva, Mariya Y. (2010). *Counterterrorism policies in Central Asia*. New York: Routledge.
- Orentlicher, Diane & Goldman, Robert. (2001). When justice goes to war: Prosecuting terrorists before military commissions. *Harvard Journal of Law and Public Policy*, 25, 653-663.
- Page, Benjamin I., Shapiro, Robert, & Dempsey, Glenn. (1987). What moves public opinion? *American Political Science Review*, 81(01), 23-43.

- Palin, Philip J. (2015, September 10). "September 10 thinking." *Homeland Security Watch: News and Analysis of Critical Issues in Homeland Security*. Retrieved from <http://www.hlswatch.com/2015/09/10/september-10-thinking/>
- Pape, Robert. (2003). The strategic logic of suicide terrorism. *American Political Science Review*, 97(3), 343-361
- Pape, Robert. (2005). *Dying to win: The strategic logic of suicide terrorism*. New York: Random House.
- Paust, Jordan. (2003). War and enemy status after 9/11: Attacks on the laws of war. *Yale Journal of International Law*, 28(2), 325-335.
- Pedahzur, Ami, & Ranstorp, Magnus. (2001). A Tertiary model for countering terrorism in liberal democracies: The case of Israel. *Terrorism and Political Violence*, 13(2), 1-26.
- Perl, Raphael F. (2007). National strategy for combatting terrorism: Background and issues for Congress. *DTIC: Congressional Research Service Report for Congress*.
- Phillips, Peter. (1995). Fully modified least squares and vector autoregression. *Econometrica: Journal of the Econometric Society*, 1023-1078.
- Phillips, Peter. (1998). Impulse response and forecast error variance asymptotics in nonstationary VARs. *Journal of Econometrics*, 83(1), 21-56.
- Phinney, Todd. (2003). Airpower versus terrorism: Three case studies. *DTIC:USAF*.
- Piazza, James A. (2009). Is Islamist terrorism more dangerous? An empirical study of group ideology, organization, and goal structure. *Terrorism and Political Violence*, 21(1), 62-88.
- Piazza, James. (2011). Poverty, minority economic discrimination, and domestic terrorism. *International Relations*, 48(3), 339-353.
- Plasmans, Joseph. (2006). *Modern linear and nonlinear econometrics*. Netherlands: Springer.
- Posen, Barry R. (2001). The struggle against terrorism: Grand strategy, strategy, and tactics. *International Security*, (26)3, 39-55.
- Prunckun, Henry Jr. & Mohr, Phillip. (1997). Military deterrence of international terrorism: An evaluation of Operation El Dorado Canyon. *Studies in Conflict and Terrorism*, 20(3), 267-280.
- Pugliese, Joseph. (2013). *State violence and the execution of law: Biopolitical caesurae of torture, black sites, drones*. New York: Routledge.

Ragazzi, F. (2014). Policed multiculturalism: The impact of counterterrorism and counterradicalization and the 'end' of multiculturalism. In Baker-Beall, Christopher & Heath-Kelly, Charlotte (Eds.). *Counter-radicalization: Critical Perspectives*. New York: Routledge, 9.

Rapoport, David. C. (1984). Fear and trembling: Terrorism in three religious traditions. *The American Political Science Review*, 78(3), 658-677.

Rapoport, David C. (2004). Modern terror: The four waves. In Cronin, Audrey & Ludes, J. (Eds.). *Attacking Terrorism: Elements of a Grand Strategy*. Washington DC: Georgetown University Press, 46-73.

Ratner, Steven R. (2002). Jus ad bellum and jus in bello after September 11. *The American Journal of International Law*, 96(4), 905-921.

Readman, Kristina Spohr. (2004). *Building sustainable and effective military capabilities: A systemic comparison of profession and conscript forces*. Amsterdam: NATO IOS Press.

Rinehart, Jason. (2010). Counterterrorism and counterinsurgency. *Perspectives on Terrorism*, 4(5).

Rosendorff, B. Peter & Sandler, Todd. (2005). The political economy of transnational terrorism. *Journal of Conflict Resolution*, 49(2), 171-182.

Ross, Jeffrey Ian & Gurr, Ted Robert. (1989). Why terrorism subsides: A comparative study of Canada and the United States. *Comparative Politics*, 21(4), 405-426.

Roth, Kenneth. (2004). The law of war in the War on Terror: Washington's abuse of "enemy combatants. *Foreign Affairs*, 83(1), 2-7.

Rumsfeld, Donald H. (2002). Transforming the military. *Foreign Affairs*, 81(3), 21-32.

Said, Wadie E. (2014). Sentencing Terrorist Crimes. *Ohio State Law Journal*, 75(3), 477-528.

Sandler, Todd. (2003). Collective action and transnational terrorism. *The World Economy* 26(6): 779-802.

Sandler, Todd & Hartley, Keith. (2007). *Handbook of Defense Economics: Defense in a Globalized World*. Amsterdam: Elsevier.

Sandler, Todd & Lapan, Harvey E. (1988). The calculus of dissent: An analysis of terrorists' choice of targets. *Synthese*, 76(2), 245-261.

Sapiro, Miriam. (2003). Iraq: The shifting sands of preemptive self-defense. *American Journal of International Law*, 97, 599-606.

- Saul, Ben. (Forthcoming, 2017). Terrorism, counterterrorism and International Humanitarian Law. In Saul, Ben & Akande, D. (Eds.). *Oxford Guide to International Humanitarian Law*. Oxford, U.K.: Oxford University Press. Retrieved from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2778893.
- Savun, Burcu & Phillips, Brian J. (2009). Democracy, foreign policy, and terrorism. *International Relations*, 53(6), 878-904.
- Schmid, Alexander P. & de Graaf, J. (1982). *Violence as communication: insurgent terrorism and the Western news media*. London: SAGE Publications.
- Schutt, Russell K. (2015). *Investigating the Social World: The Process and Practice of Research*, 8th ed. Thousand Oaks, CA: SAGE Publications.
- Shane, Scott. (2016, July 3). Drone strike statistics answer few questions, and raise many. *The New York Times*, p. A1.
- Shapiro, Jacob & Siegel, David. (2010). Is this paper dangerous? Balancing secrecy and openness in counterterrorism. *Security Studies* 19(1): 66-98.
- Shellman, Stephen M. (2004). Time series intervals and statistical inference: The effects of temporal aggregation on event data analysis. *Political Analysis*, 12(1), 97-104.
- Shiller, Robert, J. (2002). Bubbles, human judgment, and expert opinion. *Financial Analysts Journal*, 58(3), 18-26.
- Silke, Andrew. (2003). *Terrorists, victims, and society: Psychological perspectives on terrorism and its consequences*. West Sussex, UK: John Wiley and Sons Ltd.
- Sims, Christopher A. (1980). Macroeconomics and reality. *Econometrica: Journal of the Econometric Society*, 1-48.
- Sims, Christopher A., Stock, James H., & Watson, Mark W. (1990). Inference in linear time series models with some unit roots. *Econometrica*, 58(1), 113-144.
- Sims, Eric. (2016). What's news in news? A cautionary note on using a variance decomposition to assess the quantitative importance of news shocks. *Journal of Economic Dynamics and Control*, 73, 41-60.
- Siquiera, Kevin & Sandler, Todd. (2006). Terrorists versus the government: Strategic interaction, support and sponsorship. *Journal of Conflict Resolution*, 50(6), 878-898.
- Sloane, Robert D. (2008). The cost of conflation: preserving the dualism of jus ad bellum and jus in bello in the contemporary law of war. *Yale Journal of International Law*, 34(1), 47-112.

Smith, James M. & Thomas, William C. (2001). *The terrorism threat and U.S. government response: Operational and organizational factors*. Colorado Springs: DTIC, USAF Institute for National Security Studies.

Smith, Ron & Dunne, J. Paul. (2010). Military Expenditure Growth and Investment. *Defense Peace Economics*, 16, 449-461.

Solis, Gary. (2016). *The Law of Armed Conflict: International Humanitarian Law in War*. New York: Cambridge University Press.

Steven, Graeme C. S. & Gunaratna, Rohan. (2004). *Counterterrorism: A reference handbook*. Santa Barbara: ABC-CLIO, Inc.

Sullivan, John. (1996, October 17). Man is sentenced in the hiding of evidence in terrorist slaying. *The New York Times*. Retrieved from <http://www.nytimes.com/1996/10/17/nyregion/man-is-sentenced-in-the-hiding-of-evidence-in-terrorist-slaying.html>

Taft, William H. (2003). The law of armed conflict after 9/11: Some salient features. *Yale Journal of International Law*, 28(2), 319-323.

Taspinar, Omer. (2009). Fighting radicalism, not 'terrorism': Root causes of an international actor redefined. *The SAIS Review of International Affairs*, 29(2), 75-85.

Terlingen, Yvonne. (2010). The United States and the UN's targeted sanctions of suspected terrorists: What role for human rights? *Ethics and International Affairs*, 24(2), 131-142.

Thornton, J. (1996). Conintegration, causality, and export-led growth in Mexico, 1895-1992. *Economics Letter*, 50, 413-416.

Toda, Hiro & Phillips, Peter. (1994). Vector autoregression and causality: a theoretical overview and simulation study. *Econometric reviews*, 13(2), 259-285.

Trapp, Kimberley N. (2007). Back to basics: Necessity, proportionality, and the right to self-defence against non-state terrorist actors. *International and Comparative Law Quarterly*, 56(1), 141-156.

Travalio, Greg & Altenburg, John. (2003). Terrorism, state responsibility, and the use of military force. *Chicago Journal of International Law*, 4(1), 97-119.

Turk, Austin. (2004). Sociology of Terrorism. *Annual Review of Sociology*, 30, 271-286.

Voeten, E. & Brewer, P. (2006). Public opinion, the war in Iraq, and presidential accountability. *Journal of Conflict Resolution*, 50(6), 809-830.

Waltz, Kenneth N. (2010). *Theory of International Politics*. Long Grove, IL: Waveland Press.

- Wattad, Mohammed. (2006). Is Terrorism a Crime or an Aggravating Factor in Sentencing? *Journal of International Criminal Justice*, 4(5), 1017-1030.
- Wedgwood, Ruth. (1999). Responding to terrorism: The strikes against bin Laden. *Yale Journal of International Law*, 24, 559-576.
- Weiner, Tim. (1998, August 21). U.S. sees bin Laden as ringleader of terrorist network.” *The New York Times*. Retrieved from <https://partners.nytimes.com/library/world/africa/082198attack-binladen.html>
- Westphal, Lt. Col. Stephen D. (2003). Counterterrorism: Policy of preemptive action. *DTIC: U.S. Army War College*.
- Wilkinson, Paul. (1997). The media and terrorism: A reassessment. *Terrorism and Political Violence*, 9(2), 51-64.
- Wilkinson, Paul. (2001). *Terrorism versus democracy: The liberal state response*. Portland: Frank Cass Publishers.
- Williams, M. J. (2009). *NATO, security and risk management: From Kosovo to Kandahar*. New York: Routledge.
- Wittkopf, E. R. (1990). *Faces of internationalism: Public opinion and American foreign policy*. Durham: Duke University Press.
- Wlezien, Christopher. (1995). The public as thermostat: Dynamics of preferences for spending. *American Journal of Political Science*, 39(4), 981-1000.
- Yin, T. (2005). Ending the war on terrorism one terrorist at a time: A noncriminal detentions model for holding and releasing Guantanamo Bay detainees. *Harvard Journal of Law and Public Policy*, 29(1), 149-212.
- Zenko, Micah. (2016, January 12). Obama’s embrace of drone strikes will be a lasting legacy. *The New York Times*. Retrieved from <http://www.nytimes.com/roomfordebate/2016/01/12/reflecting-on-obamas-presidency/obamas-embrace-of-drone-strikes-will-be-a-lasting-legacy>
- Zenko, Micah. (2016, July 5). Do not believe the U.S. government’s official numbers on drone strike civilian casualties. *Foreign Policy*. Retrieved from <http://foreignpolicy.com/2016/07/05/do-not-believe-the-u-s-governments-official-numbers-on-drone-strike-civilian-casualties/>
- Zivot, Eric & Wang, Jiahui. (2006). *Modeling Financial Time Series*. New York: Springer.